

**LOWER DUWAMISH WATERWAY GROUP
MEMORANDUM OF AGREEMENT**

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into by and among the Port of Seattle, the City of Seattle, King County and The Boeing Company. These four signatories to this MOA are collectively referred to as the "Lower Duwamish Waterway Group" or "LDWG," and individually as "Member" or "Members." The date of this MOA is June 9, 2000.

RECITALS

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and the Washington Department of Ecology ("DOE") (collectively the "Agencies") have conducted sediment studies in the Lower Duwamish Waterway that indicated the presence of certain hazardous substances;

WHEREAS, the area of the Agencies' studies, known as the Lower Duwamish Waterway, is shown on the map marked Exhibit A attached hereto and by this reference made a part hereof;

WHEREAS, the LDWG Members have interests in the Lower Duwamish Waterway area;

WHEREAS, the Agencies are pursuing various sediment management options including potentially placing portions of the Lower Duwamish Waterway on the National Priorities List ("NPL") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA");

WHEREAS, the LDWG believes that it is in the best interests of the Puget Sound region that portions of the Lower Duwamish Waterway not become a NPL site at this time;

WHEREAS, the LDWG has certain common interests related to the Lower Duwamish Waterway and recognizes that its common interests will be best served through mutual cooperation and this MOA;

WHEREAS, the LDWG has signed the Lower Duwamish Waterway Administrative Order on Consent for Remedial Investigation/Feasibility Study ("AOC"), attached hereto as Exhibit B and by this reference made a part hereof;

WHEREAS, Exhibit A of the AOC contains a Statement of Work ("SOW"), and Tasks 1 through 7 of the SOW concern the preparation of a Phase I Remedial

Investigation ("Phase I RI"), Tasks 8 through 12 concern the preparation of a Phase II Investigation ("Phase II RI"), and Task 13 concerns the preparation of a Feasibility Study Work Plan ("FS Work Plan");

WHEREAS, some of the LDWG Members may, as authorized by the AOC, discontinue participating in the AOC after the completion of the Phase I RI or the completion of the Phase II RI and FS Work Plan;

WHEREAS, some or all of the LDWG Members may conduct a Feasibility Study ("FS") under the AOC; and

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with CERCLA or any other applicable environmental law or regulation, the LDWG Members wish to cooperate with each other with respect to certain activities related to sediments in the Lower Duwamish Waterway.

AGREEMENT

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

1. Effective Date and Condition Subsequent

This MOA shall not become effective until EPA and Ecology each sign the AOC. This MOA shall remain in effect until completion of the AOC or until it is terminated by the LDWG.

2. Shared Phase I RI Costs

2.1 Allocation of Shared Phase I RI Costs

The LDWG Members hereby agree to pay the Shared Phase I RI Costs (as defined in Section 2.2) by allocating such costs on an interim equal or *per capita* basis up to a maximum cost of \$75,000 to each Member (thus, up to a maximum total cost of \$300,000 for the Phase I RI), including all tasks necessary to complete the Phase I RI. The LDWG may agree to increase Shared Phase I RI Costs above \$300,000. Each Member shall be severally, and not jointly, liable for this interim allocation of Shared Phase I RI Costs. A performing Member reserves all rights of action against a defaulting or non-performing Member for recovery of Shared Phase I RI Costs under all applicable statutes or theories of law or equity. The Members agree that such payments constitute an interim allocation for participation under this MOA and do

not represent an allocation of responsibility for investigation or cleanup of the Lower Duwamish Waterway. Members do not waive their right to seek an allocation or contribution different from that set forth in Section 2.1 from other Members or from persons or entities not a Member to this MOA.

2.2 Definition of Shared Phase I RI Costs

Shared Phase I RI Costs shall mean all agreed to costs incurred after February 1, 2000, to complete the Phase I RI, including EPA/Ecology oversight costs applicable to this Phase I RI. Shared Costs shall not include: (1) costs incurred prior to February 1, 2000; (2) costs related to a Member's individual environmental investigations or cleanups in or near the Lower Duwamish Waterway; and (3) costs related to work performed by an employee or attorney of a Member, or any consultant other than the LDWG's common consultant, Dr. Michael Johns and the firm he will become associated with ("Consultant") or its LDWG-approved subconsultant(s).

2.3 Procedure for Payments

The Port of Seattle ("Port") shall execute a contract with the LDWG's SOW Consultant. The Port shall be the LDWG's liaison between each Member and the Consultant for the payment of Consultant invoices. The Consultant shall send its invoices to the Port, and the Port shall be responsible for distributing invoices to each Member. Each Member shall transmit to the Port's Designated Representative, as set out in Section 24, its allocation of the Shared Phase I RI Costs of the undisputed amounts of each invoice, payable to the Consultant, within thirty (30) days of receipt by the Member. The Port shall be responsible for forwarding the payments to the Consultant. Individual Members will pay any interest charges due to their late payment to the Port resulting in late payment to the Consultant.

3. Shared Phase II RI and FS Work Plan Costs

3.1 Right to Withdraw

As set forth in the AOC, the City of Seattle and The Boeing Company each has the right to withdraw from the AOC and have no further obligations under the AOC after the completion of the Phase I RI, and

such a right is unilateral and not subject to opposition by EPA, DOE, or any other entity, including the Members.

3.2 Allocation of Shared Phase II RI and FS Work Plan Costs

The Port of Seattle, King County, and any other LDWG Member who has not withdrawn from the AOC after the performance of the Phase I RI ("Phase II RI and FS Work Plan Participating Member") agree to pay the Shared Phase II RI and FS Work Plan Costs (as defined in Section 3.3) by allocating such costs on an interim equal or *per capita* basis for each Phase II RI and FS Work Plan Participating Member, up to a maximum total cost of \$1,113,000, exclusive of Phase I RI Costs. The Phase II RI and FS Work Plan Participating Members may increase Shared Phase II RI and FS Work Plan Costs above \$1,113,000, and any Phase II RI and FS Work Plan Participating Member may seek a different interim allocation of such costs above \$1,113,000. Each Phase II RI and FS Work Plan Participating Member shall be severally, and not jointly, liable for the interim allocation of Phase II RI and FS Work Plan Costs. Except as set forth in this Agreement, a performing Phase II RI and FS Work Plan Participating Member reserves all rights of action against a defaulting or non-performing Phase II RI and FS Work Plan Participating Member or a Member who has withdrawn from further participation in the AOC for recovery of Shared Phase II RI and FS Work Plan Costs under all applicable statutes or theories of law or equity. The Members agree that payments made under this MOA constitute an interim allocation for participation under this MOA and do not represent an allocation of responsibility for investigation or cleanup of the Lower Duwamish Waterway. Members do not waive their right to seek an allocation or contribution different from that set forth in Section 3.2 from other Members or from persons or entities not a Member to this MOA.

3.3 Definition of Shared Phase II RI and FS Work Plan Costs

Shared Phase II RI and FS Work Plan Costs shall mean all costs agreed to by Phase II RI and FS Work Plan Participating Members for work necessary to complete the Phase II RI and FS Work Plan, including EPA/Ecology oversight costs applicable to this Phase II RI and FS Work Plan. Shared Phase II RI and FS Work Plan Costs shall not include: (1) costs incurred prior to February 1, 2000; (2) costs related to a Member's individual environmental investigations or cleanups in or near the Lower Duwamish Waterway; (3) costs related to work

performed by an employee or attorney of a Member, or any consultant other than the LDWG's consultant or its LDWG-approved subconsultant(s); and (4) costs related to the Phase I RI.

3.4 Procedure for Payments

The Port shall execute a contract with the LDWG's Consultant. The Port shall be the LDWG's liaison between each such Member and the Consultant for the payment of Consultant invoices. The Consultant shall send its invoices to the Port, and the Port shall be responsible for distributing invoices to each such Member. Each Phase II RI and FS Work Plan Participating Member shall transmit to the Port's Designated Representative, as set out in Section 24, its allocation of the Shared Phase II RI and FS Work Plan Costs of the undisputed amounts of each invoice, payable to the Consultant, within thirty (30) days of receipt by such Member. The Port shall be responsible for forwarding the payments to the Consultant. Individual Phase II RI and FS Work Plan Participating Members will pay any interest charges due to its late payment to the Port resulting in late payment to the Consultant.

4. Shared FS Costs

4.1 Right to Withdraw

As set forth in the AOC, the City of Seattle and The Boeing Company each has the right to withdraw from the AOC and have no further obligations under the AOC after the completion of the Phase II RI and FS Work Plan, and such a right is unilateral and not subject to opposition by EPA, DOE, or any other entity, including the Members.

4.2 Allocation of Shared FS Costs

The Port of Seattle, King County and any other LDWG Member who has not withdrawn from the AOC after the performance of the Phase II RI and FS Work Plan ("FS Participating Member") agree to pay the Shared FS Costs (as defined in Section 4.3) by allocating such costs on an interim equal or per capita basis for each FS Participating Member, up to a maximum total of \$400,000, exclusive of Shared Phase I RI Costs and Shared Phase II RI and FS Work Plan Costs. The FS Participating Members may agree to increase Shared FS Costs above \$400,000, and any other FS Participating Member may seek a different interim allocation of such costs above \$400,000. Each FS Participating

Member shall be severally, and not jointly, liable for the interim allocation of Shared FS Costs. Except as set forth in this Agreement, a performing FS Participating Member reserves all rights of action against a defaulting of non-performing FS Participating Member or Member who has withdrawn from further participation in the AOC for recovery of Shared FS Costs under all applicable statutes or theories of law or equity. The Members agree that payments made under this MOA constitute an interim allocation for participation under this MOA and do not represent an allocation of responsibility for investigation or cleanup of the Lower Duwamish Waterway. Members do not waive their right to seek an allocation or contribution different from that set forth in Section 4.2 from other Members or from persons or entities not a Member to this MOA.

4.3 Definition of Shared FS Costs

Shared FS Costs shall mean all costs agreed to by FS Participating Members for work necessary to complete the FS, including EPA/Ecology oversight costs applicable to this FS. FS Costs shall not include: (1) costs incurred prior to February 1, 2000; (2) costs related to a Member's individual environmental investigations or cleanups in or near the Lower Duwamish Waterway; (3) costs related to work performed by an employee or attorney or a Member, or any consultant other than the LDWG's consultant or its LDWG-approved subconsultant(s); and (4) costs related to the Phase I RI and Phase II RI and FS Work Plan.

4.4 Procedure for Payments

The Port shall execute a contract with the LDWG's Consultant. The Port shall be the LDWG's liaison between each such Member and the Consultant for the payment of Consultant invoices. The Consultant shall send its invoices to the Port, and the Port shall be responsible for distributing invoices to each such Member. Each FS Participating Member shall transmit to the Port's Designated Representative, as set out in Section 24, its allocation of the Shared FS Costs of the undisputed amounts of each invoice, payable to the Consultant, within thirty (30) days of receipt by such Member. The Port shall be responsible for forwarding the payments to the Consultant. Individual FS Participating Members will pay any interest charges due to its late payment to the Port resulting in late payment to the Consultant.

5. Shared Public and Tribal Costs

5.1 Allocation of Shared Public and Tribal Costs

This Section 5 shall only apply if the Lower Duwamish Waterway is not listed on the NPL, or to the extent the City, County and Port agree to fund tribal and public participation in the RI/FS process. If this Section 5 applies, then the Muckleshoot and Suquamish Tribes, and entities other than EPA and Ecology, shall receive funds for such participation ("Shared Public and Tribal Costs," as defined below). The Port, County, and City ("Public and Tribal Costs Participating Member") hereby agree to pay all Shared Public and Tribal Costs by allocating such costs on an interim equal or per capita basis. Each Public and Tribal Cost Participating Member shall be severally, and not jointly, liable for this interim allocation of Shared Public and Tribal Costs. The Boeing Company shall provide to the LDWG the in-kind equivalent of the per capita amount of the Shared Public and Tribal Costs, in a form agreed to by the LDWG. The Members agree that such payments constitute an interim allocation for participation under this MOA and do not represent an allocation of responsibility for investigation or cleanup of the Lower Duwamish Waterway. Members do not waive their right to seek an allocation or contribution different from that set forth in Section 5.1 from other Members or from persons or entities not a party to this MOA.

5.2 Definition of Shared Public and Tribal Costs

Shared Public and Tribal Costs shall mean all costs agreed to by Public and Tribal Costs Participating Members to fund tribal and public participation related to this RI/FS.

5.3 Procedure for Payments

Upon the request of the EPA, and after EPA and Ecology have signed the AOC, or pursuant to a participation agreement with the Tribes that is executed by the parties, each Public and Tribal Costs Participating Member shall pay its per capita share of the Shared Public and Tribal Costs. A withdrawing Member shall only be responsible for its share of Shared Public and Tribal Costs up to the time it withdraws.

6. Consultant Procedure

6.1 Review of Work Product

All the documents, sketches, specifications, drawings, sampling plans, analytical data and reports relating to the SOW that are (1) prepared, developed or generated by the Consultant or its subconsultant(s) and (2) proposed by the LDWG to be submitted to the Agencies (collectively, "Work Product") shall be subject to review and comment by all Members before being so submitted. Following submission by the Consultant of draft Work Product to the Members, the Members shall have fifteen (15) working days to review drafts of the final Phase I RI report, the final Phase II RI report, and the final FS report, and ten (10) working days to review all other Work Product, or any other time period agreed upon by LDWG, within which to review and provide their comments or objections to the LDWG and the Consultant. If a Member does not make such comments or objections within these time periods, the LDWG may submit the Work Product to the Agencies, provided that it has been developed in accordance with the terms and conditions of this MOA and the SOW.

6.2 Waiver of Conflict

The Members hereby agree to not seek to disqualify the individual consultant of any Member on the basis of conflict of interest from professional services they have performed or may perform on behalf of that Member in connection with the Duwamish Waterway or on any other project, based upon that consultant's work related to this MOA. The Consultant is functioning as both the Port's individual consultant and the LDWG's common consultant for this MOA. The Members agree that the Port and the Consultant shall benefit from this same conflict waiver; provided, however, that Consultant, or any other common consultant of the LDWG (other than Appendix A, its owners and employees), to the extent permitted by law, shall not provide any testimony (exclusive of fact witness testimony) in a cost recovery, cost allocation or other legal proceeding related to sediments or natural resource damages in the Lower Duwamish Waterway, that is adverse or potentially adverse to the interests of the other Members. Members that withdraw from this MOA, pursuant to Section 7.4 below, agree to be bound by this waiver.

6.3 Technical Committee

All communications between the Consultant and the LDWG shall include, at a minimum, the LDWG's Technical Committee, composed of the representatives listed in Section 24. As appropriate, the Consultant, exercising his or her best judgment, shall notify the Technical Committee prior to making a decision concerning its scope of work for the LDWG and prior to communicating with third parties, including agency personnel.

7. Organization and Meetings

7.1 Administrative Lead

The LDWG shall select a Member to serve as the Administrative Lead. This Member shall provide this service at the pleasure of the LDWG. The Administrative Lead shall determine Member availability for meetings, notify Members of meetings, distribute materials and information as required, and facilitate meetings. In so far as possible, the Administrative Lead shall communicate with Members by electronic mail to save costs and paper. The LDWG has selected the City of Seattle as the initial Administrative Lead. Martha Burke will facilitate the LDWG meetings.

7.2 Meeting Schedule

The LDWG shall hold such meetings as it deems necessary, which may be called at any reasonable time by any Member.

7.3 Decision-making by Consensus

LDWG decisions shall be by consensus, i.e., unanimous vote of all Members. Each Member shall have a veto over any decision of, or position taken by, the LDWG, except as qualified below in this section. A LDWG meeting or teleconference cannot be held if a Member does not have its Designated Representative or designee present or available by telephone, unless that Member consents to the meeting proceeding or gives a written proxy to another Member. Each Member shall be entitled to one vote on all matters to be decided by the LDWG. The Members shall endeavor in good faith to reach consensus in resolving all matters to be decided by the LDWG and may consider the use of a facilitator or other dispute resolution mechanism to help achieve such consensus if necessary. Notwithstanding this or any other provision of this MOA, each Member shall have the unilateral right to withdraw from

this MOA as set forth in Section 7.4, to withdraw from the AOC, or to invoke the dispute resolution procedures of the AOC.

7.4. Withdrawal

- (a) Voluntary Withdrawal. Any Member may withdraw from participation in this MOA at any time upon written notice to the other Members, effective the date such notice is postmarked. Except as otherwise provided for herein or as otherwise agreed, any Member who withdraws shall remain responsible to pay the portion of Shared Phase I RI Costs, Shared Phase II RI and FS Work Plan Costs, Shared FS Costs, or Shared Public and Tribal Participation Costs it agreed to pay prior to the date of the Member's withdrawal. A Member who withdraws voluntarily shall not forfeit its rights to (1) copies of work product (either draft or final) existing at the time of withdrawal; and (2) reallocation of Shared Phase I RI Costs, Shared Phase II RI and FS Work Plan Costs, Shared FS Costs, and Shared Tribal and Public Participation Costs. A Member who voluntarily withdraws shall remain subject to the terms and conditions of this MOA that survive termination of this MOA. Sections of this MOA that shall survive termination are numbers Section 6.2, 14 and 16. Notwithstanding any provision of this MOA, Sections 6.1, 8, 9 and 15 of this MOA apply to and bind all Members only as these sections relate to the Phase I RI; apply to and bind only the Phase II RI and FS Work Plan Participating Members as those sections relate to the Phase II RI and FS Work Plan, and apply to and bind only the FS Participating Members as those sections relate to the FS.
- (b) Withdrawal by Default. If a Member fails to make any required payment by the due date, or breaches any other material term or condition of the MOA, such Member shall be in default under the MOA. If the Member fails to pay all required amounts due within thirty (30) days after receiving written notice of such default, or fails to cure within thirty (30) days any other material provision of this MOA, or breaches an incurable provision of this MOA, such Member shall be deemed to have withdrawn from participation in this MOA. Thereafter, such defaulting Member shall have no further rights hereunder, and it shall remain liable to pay the maximum amount of its allocation of required costs under the MOA. A defaulting Member who is deemed to have

withdrawn under this section shall remain subject to the terms and conditions of this MOA that survive termination of this MOA. Sections of this MOA that shall survive termination are numbers 6.2, 14 and 16.

8. Confidentiality and Use of Information

8.1 Confidential Information

From time to time, the Members may elect to disclose or transmit documents, communications or mental impressions concerning the SOW that have not been published or have not become part of the public domain (collectively, "Confidential Information") to each other or to any common consultant retained by the LDWG pursuant to this MOA. Confidential Information may be disclosed to or transferred among the Members orally or in writing or by any other appropriate means of communication. The Members intend that no claim of attorney-client privilege or work product immunity or any other privilege be waived by reason of participation or cooperation in the common response to, or defense of, any claims arising out of the AOC or as a result of exchange or transmittal of Confidential Information.

8.2 Preservation of Privilege

It is the purpose of this section to ensure that the exchanges and disclosures of Confidential Information contemplated herein do not diminish in any way the confidentiality of such information and do not constitute a waiver of any applicable privilege or other confidentiality protection. The Members intend by this section to protect from disclosure all information and documents exchanged among any Members or between any Member and the LDWG Consultant to the greatest extent permitted by law regardless of whether the exchange occurred before execution of this MOA and regardless of whether the writing or document is marked "Confidential." However, each Member shall not be precluded from communicating with its insurers, auditors, and government contracting agencies as may be necessary.

8.3 Maintenance of Confidentiality

Each Member agrees that all Confidential Information received from (1) any other Member or its individual consultant or counsel, or (2) any consultant retained by the LDWG shall be held in strict confidence by

the receiving Member, and that such Confidential Information shall be used only in connection with the assertion of any common claims or defenses in connection with the AOC and conducting such other activities that are necessary and proper to carry out the purposes of this MOA. Each Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any Confidential Information or who participates in work on common projects or who otherwise assists any counsel or technical consultant in connection with this MOA is familiar with the terms of this MOA and complies with the terms hereof as they relate to the duties of such person.

8.4 Anticipation of Litigation

It is expressly agreed that the matters undertaken by the Members to comply with the AOC (including without limitation, this MOA and the provisions contained herein) were undertaken as, and are intended to constitute, a joint defense in anticipation of litigation, which could be expected with respect to the AOC, that all Confidential Information developed, generated, or otherwise produced in connection with this MOA is work product in anticipation of litigation, and that each Member will reasonably defend any effort to require disclosure of any such Confidential Information.

8.5 Compelled Disclosure

If Confidential Information becomes the subject of an administrative or judicial order requiring disclosure by a Member, the Member may satisfy its confidentiality obligations hereunder by either (i) objecting to production of any such Confidential Information on grounds of confidentiality and/or any privilege, such as attorney work product or attorney-client, and seeking an order for protection from disclosure, or (ii) promptly notifying the Member(s) that generated the Confidential Information, if possible, at least five (5) days prior to any such required disclosure and informing the generating Members of all material information concerning the required disclosure.

8.6 Nonconfidential Information

Nothing in this MOA shall prevent the Members from disclosing to others or using in any manner information which the Member can show:

- (a) Was known by a Member prior to execution of the MOA, has been published or has become part of the public domain other than by the acts, omissions or fault of Members or their agents or employees in violation of this MOA; or
- (b) Has been furnished or made known to a Member by third parties (other than those acting directly or indirectly for or on behalf of the Members) or was obtained by a Member in some manner other than pursuant to this MOA, as a matter of legal right, without any applicable restrictions on its disclosure; or
- (c) Was in the Member's possession prior to the disclosure thereof by or on behalf of any of the Members.

8.7 In any litigation between or among Members, this MOA shall not preclude discovery of Confidential Information, and this MOA shall not preclude Members from obtaining disclosure of Confidential Information or alter the obligations of Members to disclose Confidential Information under applicable rules of Civil Procedure.

9. Ex Parte Contacts; Press Conferences and Press Releases

Members agree to endeavor to exercise good judgment and to act in the best interests of the LDWG in communicating in any manner with any governmental agencies or other entities, including, but not limited to, the EPA, DOE or CERCLA Natural Resource Damage Trustees, concerning the subject of this MOA. Substantive communications by a Member with such third parties concerning the subject of this MOA should be disclosed to the other Members. Members shall not hold public meetings, press conferences or issue press releases concerning the subject of this MOA without obtaining the prior consent of the LDWG. The LDWG shall not unreasonably withhold such consent. The intent of this section is to help ensure that each Member's interests and legal position as it relates to the Duwamish Waterway is protected and that the LDWG speaks as one voice to governmental agencies and the public. If the LDWG is to maintain its credibility and remain effective, it is critical that it not create confusion or send conflicting signals to governmental agencies and the public. It is not the intent of this MOA to limit the normal work of the members, which work may include discussions related to Lower Duwamish issues with other entities **and/or** the public.

10. Reservation of Claims; Tolling of Statutes of Limitation

The Members enter into this MOA without waiver of, release of, or prejudice to any claims, defenses, interests, or causes of action (collectively, "claims") for contribution, indemnity, or other claims by any Member against any other Member or other person or entity. All such claims are expressly reserved. Further, from the Effective Date of this MOA until the termination or expiration of this MOA, or a Member's withdrawal from the MOA as provided in this MOA, whichever is earlier, the Members agree expressly to toll all applicable statutes of limitation, and no Member shall file a claim under statute or common law against any other Member, concerning the RI/FS for the Lower Duwamish Waterway performed under the AOC. This prohibition on Members filing claims against each other shall not apply to specific sites, including early action sites identified or discussed in the RI/FS.

11. No Admission of Liability

A Member's participation in and compliance with this MOA or the AOC shall not be considered an admission of liability for any purpose.

12. Enforceability by Third Parties

This MOA is not intended for the benefit of any person or entity not a signatory to this MOA and is not enforceable by any third party.

13. Additional Parties

Additional parties that may have interests in the Lower Duwamish Waterway or Members that have withdrawn from the MOA may, with the unanimous consent of the LDWG, join this MOA by executing and delivering a counterpart hereof and by paying their *per capita* proportionate allocation of the Shared Phase I RI Costs, Shared Phase II RI and FS Work Plan Costs, Shared FS Costs, applicable EPA/Ecology oversight costs and Shared Public and Tribal Costs as if they had been a Member from the Effective Date, with interest thereon as determined by the LDWG. The original Members will receive a disbursement reflecting the adjusted shares.

14. Waiver of Conflicts for Attorneys

The Members hereby agree that no Member to the LDWG who is a lawyer, nor that lawyer's law firm or office, shall be barred from representing his, her or its client or clients in any litigation or controversy between two or more of the Members, arising out of this MOA or the Members' involvement in the

Duwamish Waterway area, because of that lawyer's service with the LDWG; and each of the Members hereby consents to such representation by such lawyers on behalf of the other Members.

15. National Contingency Plan and Substantial Equivalence

The Members agree that all response costs or remedial actions taken in compliance with the MOA shall be deemed consistent with the National Contingency Plan and shall be deemed the "substantial equivalent" of a DOE-initiated or directed cleanup.

16. Relationship of Members

16.1 Unless otherwise agreed, no Member, Member's representative or counsel for any Member, has acted or will act as counsel for any other Member with respect to this MOA. Each Member represents that it has sought and obtained from its own counsel any legal advice it deems necessary prior to entering into this MOA.

16.2 Nothing herein shall be deemed to create a partnership, joint venture, principal and agent, or attorney-client relationship between or among the Members.

16.3 Each member shall be individually responsible for its activities and obligations under this MOA, and no action undertaken by one Member shall create or impose liabilities on any other member.

17. Amendments

This MOA may be amended only by the unanimous approval of the Members. Such amendments shall become effective on the date written notice of such amendments is postmarked to all Members. However, nothing in this Section prohibits Members from entering into separate agreements with other Members, and unanimous approval is not required for such separate agreements.

18. Successors and Assigns

This MOA shall be binding upon the successors and assigns of the Members. No assignment or delegation of the obligation to make any payment or reimbursement hereunder shall release the assigning Member without the prior written consent of the other Members.

19. Severability

If any provision of this MOA is deemed invalid or unenforceable, the balance of the MOA shall remain in full force and effect.

20. Authority of Members

Each Member represents and warrants that he or she is has all requisite power (corporate or otherwise) to enter into and be bound by the terms and conditions of this MOA and to carry out its respective obligations hereunder and the execution and delivery by such Member of this MOA and the performance of such Member's obligations hereunder have been duly authorized by all necessary action (corporate or otherwise) of such Member.

21. Counterparts

This MOA may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

22. Entire Agreement

This MOA, including documents incorporated by reference, constitutes the entire understanding of the Members with respect to its subject matter.

23. Governing Law

This MOA shall be construed under and in accordance with the laws of the State of Washington and venue shall lie in King County Superior Court.

24. Notices; Designated Representatives; Voting Decisions of Members

All notices, bills, copies of bills, invoices, certifications, reports, and other communications to or by a member or the Consultant relating to the MOA shall be sent to the Designated Representative listed by the Member below. Only the Designated Representative, or his or her designee, shall be entitled to vote on behalf of such Member in connection with LDWG decisions pursuant to Section 7.3. Each Member shall have the right to change its Designated Representative upon ten (10) days written notice to each of the other members and the Chair. Each Member's designated representative is:

The Port of Seattle
Tom Newlon

The Boeing Company
L. B. (Skip) Fox

The City of Seattle
Elaine Bild

King County
Jeff Stern

IN WITNESS WHEREOF, the Members hereto enter into this MOA. Each person signing this MOA represents and warrants that he or she has been duly authorized to enter into this MOA by the corporation or municipality on whose behalf it is indicated that the person is signing.

THE PORT OF SEATTLE

KING COUNTY



M.R. Dinsmore
Executive Director

Ron Sims
King County Executive

THE CITY OF SEATTLE

THE BOEING COMPANY

Paul Schell
Mayor

Kirk J. Thomson
Director of Energy & Environmental
Affairs

The City of Seattle
Elaine Bild

King County
Jeff Stern

IN WITNESS WHEREOF, the Members hereto enter into this **MOA**. **Each** person signing this **MOA** represents and warrants **that** he or she has been duly authorized **to** enter into this **MOA** by the corporation or municipality on whose **behalf** it is indicated **that** the person is **signing**.

THE PORT OF SEATTLE

KING COUNTY


M.R. Dinsmore
Executive Director

Ron Sims
King County Executive

THE CITY OF SEATTLE

THE BOEING COMPANY

Paul Schell
Mayor



Kirk J. Thomson 12-11-00
Director of Energy & Environmental
Affairs

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Paul Schell
Mayor

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Affairs

behalf of such Member in connection with LDWG decisions pursuant to Section 73. Each Member shall have the right to change its Designated Representative upon ten (10) days written notice to each of the other members and the Chair. Each Member's designated representative is:

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THE PORT OF SEATTLE

KING COUNTY

M.R. Dinsmore
Executive Director



Ron Sims
King County Executive

THE CITY OF SEATTLE

THE BOEING COMPANY

Paul Schell
Mayor

Kirk J. Tho
Director of Energy & Environmental
Affairs