

**LOWER DUWAMISH WATERWAY GROUP
MEMORANDUM OF AGREEMENT**

SIXTH AMENDMENT

THIS SIXTH 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 Sixth Amendment to the MOA ("6th Amendment") provides for the performance of remedial design for the upper reach of the LDW Site, as defined in Attachment A (Statement of Work), and other tasks as provided in the SOW. This 6th Amendment applies MOA contracting, invoicing and grant procedures that 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

King County has agreed to hire a consultant ("Consultant") to design the remedy for the upper reach of the LDW Site and perform certain other tasks for the LDWG, as provided for in the SOW. The Consultant’s scope shall be according to the 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 6th Amendment shall become effective when all four Members have signed it. This 6th Amendment shall remain in effect until completion of the Consultant’s scope or until it is terminated by the LDWG.

3. Remedial Design Work

3.1 Allocation of Shared Remedial Design Work Costs

Remedial Design Work includes design of the upper reach of the LDW Site plus other work as required by the SOW, including any modifications to the SOW that are approved by the LDWG and EPA, and including any other scope items that are approved by LDWG. The LDWG Members hereby agree to pay the Shared Remedial Design Work 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 Remedial Design Work Costs. A performing Member reserves all rights of action against a defaulting or nonperforming Member for recovery of Shared Remedial Design Work Costs under all applicable statutes and theories of law or equity. The Members agree that such payments do not constitute an 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 2.1 of this 6th 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 Remedial Design Work Costs

Shared Remedial Design Work 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 perform the Remedial Design Work; 2) EPA and Ecology oversight costs applicable to the Remedial Design Work, and any modifications to the SOW that are approved by the LDWG and EPA; 3) costs associated with implementing changes or additional work required during and/or after completion of the Remedial Design Work that are mandated by the EPA; and 4) solely for the purposes of this 6th Amendment, Shared Costs shall include costs for King County's contract, project management, and property acquisition staff and payment for appropriate access, easement, or similar agreements, as necessary to implement the Remedial Design Work and any modifications thereto.

3.3 Procedure for Payments.

3.3.1 The County shall pay the Consultant according to the terms of its contract with the County. The County shall invoice the other LDWG Member's their *per capita* shares of those payments and the County's internal costs described in Section 3 .2. For the City of Seattle, the County shall send an invoice for 31% of the City's share to a designated person at Seattle City Light and shall send an invoice for 69% of the City's share to a designated person at Seattle Public Utilities. The City may change this procedure for its invoices upon written notice to the County. The invoices shall distinguish the County's internal costs for contract, project management, and property acquisition staff from the payments to the Consultant and shall indicate the name and job title of each County staff member whose costs are included. 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 County's Designated Representative, as set forth in Section 24 of the MOA, its part of the Shared SOW

Costs, within thirty (30) days of receiving an invoice with appropriate backup from the County.

3.3.2 The City, Port, and Boeing shall continue in their roles as contracting agents for LDWG's consultants other than the Consultant to be retained by the County pursuant to this 6th Amendment, and other than with regard to any continuing work that is now incorporated into the attached SOW. The procedures established in MOA section 2.3, 3.4 and 4.4 are hereby modified as follows: the City, Port, and Boeing shall pay the LDWG consultants' invoices according to the terms of their contracts. The Members shall invoice the other LDWG Members 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 Remedial Design Work Consultant

3.4.1 The County will comply with its own and all other applicable statutes regarding hiring of consultants and contractors by governmental entities in advertising for and selecting the Consultant for the Remedial Design Work. Members will have a reasonable opportunity to provide the County with input on the qualifications and specifications for the contract as described in Sections 3.4.2 and 3.4.3 below.

3.4.2 Each Member will have one representative on the selection committee for the Remedial Design Work 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 County shall execute a contract with the Consultant that is selected using the agreed upon selection process.

3.5 Oversight of the Remedial Design Work 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 County's project manager.

3.5.2 The Consultant hired to perform the Remedial Design Work 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 County'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 County project manager will direct the consultant on needed consensus changes to work products.

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 completion 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 ("Grants").

6. Counterparts

This Sixth 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.

IN WITNESS WHEREOF, the Members hereby enter into this 6th Amendment. Each person signing this 6th Amendment represents and warrants that he or she has been duly authorized to enter into this 6th Amendment by the corporation or municipality on whose behalf it is indicated that the person is signing.

PORT OF SEATTLE

Date: _____

KING COUNTY

Date: _____

CITY OF SEATTLE

Date: _____

THE BOEING COMPANY

Date: _____