

**LOWER DUWAMISH WATERWAY GROUP  
MEMORANDUM OF AGREEMENT**

**SEVENTH AMENDMENT**

THIS SEVENTH AMENDMENT to the Lower Duwamish Waterway Group Memorandum of Agreement ("MOA"), dated \_\_\_\_\_, 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 Seventh Amendment to the MOA ("Seventh Amendment") provides for the performance of remedial design for the middle reach of the LDW Site, as defined in Attachment A (Statement of Work), and other tasks as provided in the SOW. This Seventh Amendment applies MOA contracting, invoicing and grant procedures that reflect current LDWG practices.

All terms and provisions in the original 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 of Seattle (City) has agreed to hire a consultant ("Consultant") to design the remedy for the middle 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 Seventh Amendment shall become effective when all four Members have signed it. This Seventh Amendment shall remain in effect until completion of the Consultant's scope or until it is terminated by the LDWG.

**3. Middle Reach Remedial Design Work**

**3.1 Allocation of Shared Middle Reach Remedial Design Work Costs**

Middle Reach Remedial Design Work includes design of the Middle 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 Middle Reach 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 Middle Reach Remedial

Design Work Costs. A performing Member reserves all rights of action against a defaulting or nonperforming Member for recovery of Shared Middle Reach 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 the original LDWG MOA 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 Middle Reach Remedial Design Work Costs**

Shared Middle Reach 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 Middle Reach Remedial Design Work; 2) EPA and Ecology oversight costs applicable to the Middle Reach 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 Middle Reach Remedial Design Work that are mandated by the EPA; and 4) solely for the purposes of this Seventh Amendment, Shared Costs shall include costs for the City's contract, project management, and property acquisition staff and payment for appropriate access, easement, or similar agreements, as necessary to implement the Middle Reach Remedial Design Work and any modifications thereto.

### **3.3 Procedure for Payments.**

**3.3.1** The City shall pay the Consultant according to the terms of its contract with the City. The City shall invoice the other LDWG Members their *per capita* shares of those payments and the City's internal costs described in Section 3.2. The invoices shall distinguish the City'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 City 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 City's Designated Representative, as set forth in Section 24 of the MOA, its part of the Shared Remedial Design Work Costs, within thirty (30) days of receiving an invoice with appropriate backup from the City.

**3.3.2** The County, Port, 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 Seventh Amendment, and other than with regard to any continuing work that is now incorporated into the attached SOW. The procedures established in the original MOA sections 2.3, 3.4 and 4.4 are hereby modified as follows: The

County, 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 Administrative Order on Consent/Agreed Order entered into by LDWG, EPA, and Ecology in 2000 for the LDW Site. 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 Middle Reach Remedial Design Work Consultant**

**3.4.1** The City 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 Middle Reach Remedial Design Work. 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** The County, Port, and Boeing will each have one representative on the selection committee for the Middle Reach Remedial Design Work Consultant. The City will have two members (project delivery and technical lead), as well as WMBE specialist input. 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 LDW 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 Middle Reach 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 City's project manager.

**3.5.2** The Consultant hired to perform the Middle Reach 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 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 them to all Members. The City 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 schedule for the Middle Reach Remedial Design Work as set forth in the SOW (as may be amended by EPA), including delays related to acquisition of property rights required for completion of work pursuant to the SOW.

**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 Seventh 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 document.

///

///

///

///

///

///

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

PORT OF SEATTLE

KING COUNTY

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF SEATTLE

THE BOEING COMPANY

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_