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Item No. 8i – attach 1  
Meeting Date: December 12, 2023

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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Lower Duwamish Waterway  
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Seattle, WA  
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)  
Port of Seattle, City of Seattle,  
)  
King County, The Boeing Company  
)  
)  
Respondents  
)  
)  
Proceeding Under Sections 104, 122(a)  
)  
and 122(d)(3) of the Comprehensive  
)  
Environmental Response, Compensation, )  
and Liability Act, 42 U.S.C. §§ 9604,  
)  
9622(a) and 122(d)(3)  
)  
\_\_\_\_\_)

IN THE MATTER OF:

U.S. EPA Region 10  
CERCLA Docket No. 10-2001-0055

SIXTH AMENDMENT

Introduction  
In December 2000, the City of Seattle, King County, the Port of Seattle, and the Boeing Company (“Respondents”) entered into an Administrative Order on Consent for Remedial Investigation/Feasibility Study, U.S. EPA, Region 10 Docket No. CERCLA 10-2001-0055, Ecology Docket No 00TCPNR-1895 (12/20/2000) (the “RI/FS AOC”) with the United States Environmental Protection Agency (“EPA”) and the Washington State Department of Ecology (“Ecology”). Respondents performed a remedial investigation and feasibility study for the Lower Duwamish Waterway Superfund Site (“Site” or “LDW”) under the oversight of EPA and Ecology pursuant to the RI/FS AOC. The RI/FS AOC has been amended five times to provide for the performance of additional studies related to the Site. The First Amendment, effective March 19, 2013, provided for the performance of the Fisher Study for the LDW. The Second Amendment, effective July 17, 2014, provided for the performance of the Enhanced Natural Recovery (ENR)/Activated Carbon (AC) pilot study. The Third Amendment, effective April 27, 2016, provided for the performance of pre-remedial design studies. The Fourth Amendment, effective July 9, 2018, provides for remedial design (RD) of the LDW Upper Reach. The Fifth Amendment, effective July 8, 2021, provides for RD of the LDW Middle Reach. The Respondents continue to perform these studies pursuant to the terms of the amended RI/FS AOC.

The EPA issued a Record of Decision for the Site on November 21, 2014 (the “Lower

Duwamish Waterway ROD"). The Lower Duwamish Waterway ROD selected remedial actions for the in-waterway portion of the Site.

Source control is an integral part of the strategy for addressing contamination throughout the Site. An objective of the source control endeavor is to find and sufficiently control sources upland of the waterway before commencing in-waterway remediation. Ecology is the lead agency for implementing source control actions and uses its existing regulatory authorities to control sources. For purposes of assessing adequacy of source control in the immediate source area to the LDW, Ecology has divided the LDW into three reaches: upper, middle, and lower. Consistent with Sections 4.2 and 13.2.7 of the LDW ROD, EPA intends to commence remedial action for the LDW Site or a segment thereof after a source control determination for the LDW Site or segment thereof is made.

The objective of this Sixth Amendment is to terminate the amended RI/FS AOC.

Sixth Amendment

EPA, Ecology, and Respondents agree to amend and terminate the amended RI/FS AOC as follows:

1. With the exception of XVII (Record Preservation), Section XVIII (Dispute Resolution), Section XXII (Payment of EPA Oversight Costs) and Section XXIV (Other Claims) of the amended RI/FS AOC, the amended RI/FS AOC shall, despite the terms of Section XXVII (Termination and Satisfaction) of the amended RI/FS AOC, terminate on the date a consent decree that provides for implementation of remaining remedial design and remedial action for the LDW Site (RD/RA Consent Decree) is entered by the United States District Court for the Western District of Washington (hereafter the Effective Date). Under Section XXI.4 of the amended RI/FS AOC, the requirements of the amended RI/FS AOC will have been satisfied with respect to work performed up to the Effective Date and all remaining amended RI/FS AOC obligations to perform work will be subsumed into the RD/RA Consent Decree.

2. Section XVIII (Dispute Resolution), Section XXII (Payment of EPA Oversight Costs), and Section XXIV (Other Claims) of the amended RI/FS AOC shall terminate on the date Respondents pay EPA for all oversight costs that are incurred by EPA pursuant to the amended RI/FS AOC from October 1, 2022 up to the Effective Date. Payment of the oversight costs EPA incurs during this period shall be made pursuant to the terms of Section XXII (Payment of EPA Oversight Costs).

3. Section XXI (Reservation of Rights and Reimbursement of Costs) and Section XXIV (Other Claims) shall remain in effect after the Effective Date only for Respondents that do not sign the RD/RA Consent Decree.

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4. The amounts paid by Respondents to the EPA Hazardous Superfund pursuant to this Sixth Amendment and the requirements of Section XXII (Payment of EPA Oversight Costs) of the amended RI/FS AOC shall be deposited by EPA into the Lower Duwamish Waterway Superfund Site Special Account pursuant to Section XXI (Reservations of Rights and Reimbursement of Costs) of the amended RI/FS AOC to be retained and used by EPA to conduct or finance response actions at or in connection with the Site. In addition, EPA has several other site-specific accounts related to the Site within the EPA Hazardous Superfund. Funds held in such sitespecific accounts may be transferred to the Lower Duwamish Waterway Superfund

Site Special Account if EPA determines that the funds are no longer needed to finance or otherwise support the implementation of response actions for which such site-specific account was created. After completion of response actions at or in connection with the Site, any funds remaining in the Lower Duwamish Waterway Site Specific Account may be transferred by EPA to the EPA Hazardous Substance Superfund.

It is so ORDERED AND AGREED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

By: \_\_\_\_\_  
Kira Lynch  
Chief, Remedial Cleanup Branch Unit Manager,  
Superfund and Emergency Management Division  
Region 10  
United States Environmental Protection Agency



DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Kim Wooten, Manager  
Northwest Regional Office.  
Program Manager  
Toxics Cleanup Program  
Washington Department of Ecology

DATE: \_\_\_\_\_

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Agreed this \_\_\_\_ day of \_\_\_\_\_, 2023  
For Respondent Port of Seattle  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Agreed this \_\_\_\_ day of \_\_\_\_\_, 2023  
For Respondent City of Seattle  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Agreed this \_\_\_\_ day of \_\_\_\_\_, 2023  
For Respondent King County  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Agreed this \_\_\_\_ day of \_\_\_\_\_, 2023  
For Respondent The Boeing Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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