

## RESPONSE COST SETTLEMENT AND IMPLEMENTATION AGREEMENT FOR LOWER DUWAMISH WATERWAY SUPERFUND SITE

This **Agreement** is made as of the **Effective Date**<sup>1</sup> between and among The **Boeing Company**, the **City of Seattle**, and **King County** (collectively, “**Performing Parties**”) whose authorized representatives have executed counterparts of this **Agreement**.

### RECITALS

**WHEREAS**, the **EPA**, pursuant to its authority under **CERCLA**, listed the **LDW Site** on the National Priorities List on September 13, 2001;

**WHEREAS**, the **City of Seattle**, **King County**, **Port of Seattle**, and The **Boeing Company** entered into the **LDWG MOA** to form a performing **PRP** group referred to as **LDWG** in June 2000. **LDWG** members shortly thereafter each entered into an **AOC** with **EPA** and **Ecology**, which required **LDWG** members to perform a **RI/FS** for the **LDW Site**. The **AOC** has since been amended several times to require **LDWG** members to perform other studies and a portion of the design work for the **LDW Site**. Some of that work is ongoing;

**WHEREAS**, following **LDWG**’s completion of the **RI/FS** and **EPA**’s issuance of a Proposed Plan, **EPA** issued a **ROD** in November 2014, which sets forth the remedy for remediation of the **LDW Site**;

**WHEREAS**, the **LDWG** members plus around 40 other parties entered into the **Allocation MOA**, which became effective on April 25, 2014 and was later amended multiple times, for the purpose of developing recommended shares of costs incurred to perform the **Work** under the **AOC**, other **Work** required by **EPA** or **Ecology**, and costs to be incurred in the future relating to remediation of the **LDW Site**;

**WHEREAS**, pursuant to the **Allocation MOA**, the **Allocation Parties** hired the **Allocator** for the purpose of making a recommendation of each **Allocation Party**’s allocated share of costs for the **LDW Site**;

**WHEREAS**, the **Allocation Parties** participated in the **Allocation Process** contemplated by the **Allocation MOA** and the **Allocator** issued a **Final Allocation Report** which, among other things, set forth the **Allocator**’s recommendation of each **Allocation Party**’s allocated share of costs;

**WHEREAS**, the **Port** withdrew from the **Allocation Process** and from **LDWG** in July 2022; the remaining **LDWG** members continue to perform and the **Port** continues to fund its share of ongoing **Work** under the **AOC** pursuant to the terms of the **LDWG MOA**, though the **AOC** will terminate per the terms of the Sixth Amendment to the **AOC** on the date the **Consent Decree** is entered by a federal court;

<sup>1</sup> All bolded terms are defined in the Definitions section.

**WHEREAS**, except for the **Port** and **Hanson**, all of the **Allocation Parties**, including the remaining **LDWG** members, accepted their **FAR Shares** for the purpose of settlement negotiations;

**WHEREAS**, **Hanson** previously settled with the **LDWG** members and others in bankruptcy proceedings;

**WHEREAS**, the remaining **LDWG** members have expressed the intent to serve as **Performing Parties** for implementation of the **LDW Site** remedy;

**WHEREAS**, the remaining **LDWG** members and other parties have negotiated a **Consent Decree** with **EPA** and **Ecology**, which is anticipated to be entered in federal court;

**WHEREAS**, to allow implementation of the **LDW Site** remedy to proceed on schedule, on July 18, 2024, **EPA** issued a “bridge” **UAO** to the remaining **LDWG** members;

**WHEREAS**, the remaining **LDWG** members in September 2024 amended the **LDWG MOA** for a ninth time to cover their cooperation and cost sharing to implement the **UAO**, and intend for this **Agreement** to supersede the **LDWG MOA** including all amendments thereto upon the **Effective Date** of the **Consent Decree** that supersedes the **UAO**;

**WHEREAS**, instead of participating in the performance of the remedy selected by **EPA** in the **ROD**, the remaining **Allocation Parties** negotiated settlements to resolve their liability for the cleanup of the **LDW Site** by paying **Settlement Funds** to the **Performing Parties** either as one-time lump sum payments (**Cash Out Parties**) or on a pay-as-you-go basis (**Funding Party**);

**WHEREAS**, the **Performing Parties** have negotiated a settlement with the **Settling Federal Agencies**, terms of which are contained in the **Consent Decree**, and may reach settlements regarding **Response Costs** for the **LDW Site** with other parties, such as the **Port** and parties who did not participate in the allocation process.

**NOW, THEREFORE**, in consideration of the foregoing, the **Performing Parties** mutually agree as follows:

A. Definitions

1. “**Agreement**” means this Response Cost Settlement and Implementation Agreement for Lower Duwamish Waterway Superfund Site.

2. “**Allocation MOA**” means the Alternative Dispute Resolution Memorandum of Agreement for the **Allocation Process** signed by 25 parties as of April 25, 2014 and later amended to add more parties and make additional changes. This definition is inclusive of all amendments to the **Allocation MOA**.

3. “**Allocation Parties**” means the parties that entered into the **Allocation MOA** and have participated in the **Allocation Process**; the composition of the **Allocation Parties** has changed over time.

4. “**Allocation Process**” means the alternative dispute resolution process conducted pursuant to the **Allocation MOA**.

5. “**Allocator**” means the practicing attorney with substantial experience with **CERCLA** and allocating costs between **PRPs** who was hired to provide a recommended allocation of responsibility among the **Allocation Parties** and others for costs associated with the **LDW Site**.

6. “**AOC**” means the Administrative Order on Consent executed by **LDWG** members, **EPA**, and **Ecology** in December 2000, and all amendments thereto.

7. “**Boeing**” means The Boeing Company.

8. “**Cash Out Party**” (in the singular) or “**Cash Out Parties**” (collectively) shall mean any remaining **Allocation Party** or any other party, other than the **Settling Federal Agencies**, that makes a one-time payment (or in the case of those claiming financial hardship, a limited number of payments) to the **Performing Parties** to resolve its liability at the **LDW Site**.

9. “**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.

10. “**City**” means City of Seattle.

11. “**Consent Decree**” means a consent decree entered in federal court that is signed by the **Performing Parties** and **EPA**, at minimum, and that governs the **Performing Parties’** implementation of the **LDW Site** remedy consistent with the **ROD** and under **EPA** oversight, and including any modifications to the **Work** under Paragraph 11(d) of the **Consent Decree**.

12. “**Confidential Information**” means any portions of any documents or communications exchanged between **Performing Parties** regarding the **Site**, including but not limited to communications concerning the development and implementation of this **Agreement**, the **Work**, or negotiations with **Cash Out Parties** or other **PRPs**, and that are subject to the application of a legal privilege or doctrine or other legal protection from disclosure (including but not limited to the mediation privilege, joint-defense privilege, attorney-client or work-product privilege), and that have not been disclosed in a manner that is a waiver of the applicable privilege (absent any unauthorized or unintentional disclosure).

13. “**Contracting LDWG Member**” means a member of **LDWG** (i.e., a **Performing Party**) that the **LDWG** members (**Performing Parties**) agree should contract with a consultant or contractor to manage or perform any part of the **Work** and who does so.

14. “**County**” means King County.

15. “**Covered Matters**” means claims or liabilities for **Past Costs**, **Interim Costs**, **Future Costs**, and other costs incurred by remaining **LDWG** members to implement orders regarding the **Early Action Areas**.

16. “**Early Action Areas**” means the five areas of the **LDW Site** identified in the **ROD** where early cleanup was performed: Duwamish Diagonal CSO/SD, Slip 4, Plant 2/Jorgensen Forge, Terminal 117, and Norfolk CSO/SD.
17. “**Ecology**” means the Washington State Department of Ecology.
18. “**Effective Date**” means the date this **Agreement** takes effect, which is the date when the **Consent Decree** has been entered by the Court. The **Performing Parties** may unanimously agree in writing to change the definition of **Effective Date** at any time after they execute this **Agreement**.
19. “**EPA**” means the United States Environmental Protection Agency.
20. “**Final Allocation Report**” or “**FAR**” means the **Final Allocation Report** issued by the **Allocator** in May 2022.
21. “**FAR Shares**” means the shares set forth in Attachment 1 to the **FAR** (entitled “MOA Participants and the United States”).
22. “**Funding Parties**” means **Allocation Parties** or others that settle their liability for **Future Costs** by paying their share of such costs as they are incurred rather than becoming **Cash Out Parties**. As of the date this **Agreement** is signed, Continental Holdings, Inc. is the only **Funding Party**.
23. “**Future Costs**” means **Response Costs** incurred by **Performing Parties** to implement the remedy and meet other requirements of the **Consent Decree**, whether incurred collectively (“**Future Shared Costs**”) or individually (“**Future Individual Costs**”), on or after the **Effective Date**.
24. “**Gap Cost(s)**” means short-term or permanent gaps in funding as a result of some parties who were assigned **FAR Shares** not paying their full **FAR Shares** of **Response Costs** for the **Work**.
25. “**Hanson**” means Hanson Permanente Cement, Inc. and Kaiser Gypsum Co., Inc.
26. “**Individual Costs**” are necessary, NCP-consistent costs other than **Shared Costs** that are incurred on an individual basis by each **Performing Party** to implement the **Work**. The costs incurred by the **City** and **Boeing** to perform the monitoring required by **EPA** in their respective **Early Action Areas** until those **Early Action Areas** are incorporated into the **Site** remedy for long-term monitoring and institutional controls under the **Consent Decree**, Appendix B (Statement of Work) are not considered **Individual Costs** that can be reallocated for purposes of this **Agreement**.
27. “**Interim Costs**” means **Response Costs** incurred by remaining **LDWG** members to implement the **Work** required by the **AOC** or the **UAO** (or incurred in anticipation of the **UAO** or **Consent Decree**) for the period from January 1, 2023 up to the **Effective Date**,

whether incurred collectively (“**Shared Interim Costs**”) or individually (“**Individual Interim Costs**”), and further sub-categorized as follows:

(a) “**Interim AOC Costs**” means **Interim Costs** incurred by the remaining **LDWG** members to perform work required by the **AOC**; and

(b) “**Interim Bridge Costs**” means **Interim Costs** incurred by the remaining **LDWG** members to perform work that was (1) necessary in order to commence construction of the remedy in 2024, (2) not addressed by the **AOC**, and (3) required by or incurred in anticipation of the **UAO** or **Consent Decree** and their attached **SOWs**.

28. “**Joint Contractors/Consultants**” means all of the contractors and consultants hired by **Contracting LDWG Members** to manage or perform any part of the **Work**.

29. “**LDW**” or “**LDW Site**” or “**Site**” means the Lower Duwamish Waterway Superfund Site, which **EPA** listed on the National Priorities List on September 13, 2001, as defined as “**Site**” in the **Consent Decree**.

30. “**LDWG**” means the performing **PRP** group known as the Lower Duwamish Waterway Group, as that group has changed over time (or individually, “**LDWG member**”); **LDWG** originally consisted of the **City**, the **County**, **Boeing** and the **Port**; remaining **LDWG** members following the **Port**’s withdrawal now consist of the **City**, the **County** and **Boeing**, and the three are referred to as either “remaining **LDWG** members” or **Performing Parties** in this **Agreement** based on the point of reference.

31. “**LDWG MOA**” means the Memorandum of Agreement executed by **LDWG** members in 2000, its nine amendments, and future amendments, if any.

32. “**Past Costs**” means **Response Costs** to implement the **AOC** incurred by the remaining **LDWG** members, whether incurred collectively (“**Past Shared Costs**”) or individually (“**Past Individual Costs**”), through December 31, 2022.

33. “**Performing Parties**” means the parties responsible for performing the **Work** required by the **Consent Decree**, which are **Boeing**, the **City**, and the **County** (or individually “**Performing Party**”).

34. “**Performing Party Share**” means the percentage share that results from redistributing 100% of all **FAR Shares** among the **Performing Parties** in proportion to each of their **FAR Shares**. The **Performing Party Shares** are as follows:

<b>Performing Party</b>	<b>FAR Share</b>	<b>Performing Party Share</b>
Boeing	30.1091%	53.5896%
City	17.6774%	31.4631%

County	8.3981%	14.9473%
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35. “**Person**” (in the singular) or “**Persons**” (in the plural) shall have the same definition as “person,” as defined in 42 U.S.C. § 9601(21).

36. “**Port**” means the Port of Seattle.

37. “**PRP**” means Potentially Responsible Party as that term is defined in 40 C.F.R. § 304.12.

38. “**Response Actions**” means actions taken at the **LDW Site** in “response” as that term is defined in 40 C.F.R. § 307.14, performed by **LDWG** members or the **Performing Parties** to implement the **AOC**, the **UAO** or **Consent Decree** or in anticipation of the **UAO** or **Consent Decree**, or orders regarding **Early Action Areas**.

39. “**Response Costs**” means costs of “response” as that term is defined in 40 C.F.R. § 307.14 and incurred or paid in connection with **Response Actions**, including any penalties that may be assessed under the **Consent Decree**.

40. “**RI/FS**” means the Remedial Investigation and Feasibility Study prepared for the **LDW Site**.

41. “**ROD**” means the Record of Decision that selected the remedy for the **LDW Site** and was issued by **EPA** in November 2014, and all attachments thereto, as modified by the Explanation of Significant Differences issued by **EPA** in September 2021, and all attachments thereto.

42. “**Settling Party**” or “**Settling Parties**” means all parties that settle their liability for the **LDW Site** with the **Performing Parties**, including **Cash Out Parties**, the **Funding Party**, and the **Settling Federal Agencies**. “**Settlement Funds**” are the funds received from **Settling Parties** pursuant to settlement agreements between **Performing Parties** and **Settling Parties**.

43. “**Settling Federal Agencies**” means the agencies of the United States Government that settle their liability for the **LDW Site** with the **Performing Parties**. The **Settling Federal Agencies** are those that are listed in the **Consent Decree**.

44. “**Shared Costs**,” shall mean necessary, NCP-consistent costs the **Performing Parties** have agreed were or will be incurred for the following: 1) payments, including payments associated with changes to original contracts when the changes are agreed to by the **Performing Parties** or required by **EPA**, to **Joint Contractors/Consultants**; 2) **EPA** and **Ecology** oversight costs invoiced to the **Performing Parties** for the **Work**; 3) costs associated with any **EPA**-required modifications to the SOWs attached to the **AOC**, **UAO**, or **Consent Decree** and incurred for the **Work**; 4) costs associated with implementing changes or additional **Work** required by the **AOC**, **UAO** or **Consent Decree**; 5) costs of a **Contracting LDWG Member’s** staff directly involved with procuring a **Joint Contractor/Consultant**, contract negotiations, project management, construction management, and other related tasks (including

providing subject matter expertise, such as real property, health and safety, archeological, etc. expertise) for the **Work**; 6) costs of developing, negotiating and implementing appropriate access, easement, or tribal agreements, including but not limited to the cost of covering associated indemnities except to the extent of the willful or negligent acts or omissions of any one **Performing Party's** representative(s), as necessary to implement the **Work**; and 7) costs for drafting, negotiating and implementing required institutional controls. The **LDWG** Manager group or Director group may determine by consensus that additional costs should be treated as **Shared Costs**.

45. “**Trust Agreement**” means an agreement between the **Performing Parties** and a trustee (the “**Trustee**”) for the trust required by this **Agreement** and the settlements with the **Settling Parties** (the “**Trust**”), which shall define how the **Trustee** is to manage funds in the **Trust** and perform other tasks.

46. “**UAO**” means the Unilateral Administrative Order issued by **EPA** on July 18, 2024 to all the remaining **LDWG** members for the **LDW Site** to bridge the gap between the timely commencement of cleanup construction and the effective date of the **Consent Decree**, which will thereafter govern continued implementation of the **LDW Site** remedy by the **Performing Parties**.

47. “**Work**” means those actions required to implement the **AOC**, the **UAO** or the **Consent Decree**.

B. Effective Date and Appendices

1. The provisions of this **Agreement** shall take effect upon the **Effective Date**.

2. The following Appendices are attached to and incorporated into this **Agreement**:

- (a) Additional Terms for Settlement Implementation – Lower Duwamish Waterway (Appendix A)
- (b) Amount and Distribution of Settlement Funds (Appendix B)
- (c) Past Cost Reallocation Among Performing Parties (Appendix C)
- (d) Distribution of Orphan Share Relief (Appendix D)

C. Implementation of the Work and Decision-Making

1. The **Performing Parties** agree to perform (or to contract with third parties to perform), to make decisions and to pay for the cost of the **Work** required by the **Consent Decree** consistent with the terms of this **Agreement** including the Additional Terms for Settlement Implementation (Appendix A) and other appendices attached hereto.

2. The **City** and **Boeing** agree to continue to individually perform and pay separately for the monitoring required by **EPA** in their respective **Early Action Areas**, which costs shall not be subject to the cost sharing and reallocation terms of this **Agreement**. After those **Early Action Areas** are incorporated into the **Site** remedy for long-term monitoring and institutional controls under the **Consent Decree**, Appendix B (Statement of Work), such subsequent costs will become subject to the cost sharing and reallocation terms of this **Agreement**.

D. Funding the Work required by the Consent Decree

1. For purposes of settlement and to ensure that 100% of the cost is funded, the **Performing Parties** agree to fund the **Work** required by the **Consent Decree**, including **Gap Costs**, by paying their respective **Performing Party Shares** of the necessary, NCP-consistent costs of that **Work**. Sources of the funds that the **Performing Parties** will use to pay their **Performing Party Shares** include funds received from or paid by other parties for the **Work** in addition to any other available source(s) of funds. This obligation is made subject to subsequent adjustment for certain **Future Costs** under Appendix D only to accomplish the distribution of orphan share relief among the **Performing Parties**.

2. The **Consent Decree** requires the **Performing Parties** to provide one of several specified mechanisms of financial assurance initially in the amount of \$667,842,290. The **City** agrees to perform the demonstration showing it meets the specified financial test under Paragraph 25 of the **Consent Decree**, in order to satisfy the **Consent Decree's** requirement that the **Performing Parties** provide financial assurance. By agreeing to meet the financial test required by the **Consent Decree**, however, the **City** is not agreeing to be responsible for providing funds to cover the **Performing Party Shares** of the **County** and **Boeing** in the event of a work takeover by **EPA**. In the event that **EPA** takes over part or all of the **Work**, each of the **Performing Parties** will be responsible for providing its **Performing Party Share** of the estimated cost for the **Work** being taken over.

3. The **Performing Parties** agree to establish a **Trust** and contract with a **Trustee** to, among other things, hold and manage **Settlement Funds** received, maintain payment records, make payments for the **Work** or reimburse the **Performing Party** that has paid for the **Work**, issue cash calls to the **Funding Party** as needed, and make investments of funds in various designated sub-accounts in accordance with the **Trust Agreement** and the direction of the **Performing Party** for that sub-account.

4. The **Trust** shall have a sub-account for each of the **Performing Parties** that is further separated into sub-accounts for **Past Costs** and **Future Costs**. The **Trust** also shall have a sub-account for the **Funding Party's Future Costs** payments.

(a) Each **Performing Party** may draw upon or direct the **Trustee** to draw upon the funds in its **Future Costs** sub-account only to pay or reimburse for its share of **Future Costs** of the **Work**. In no event, absent **EPA** issuing a Certification of Work Completion pursuant to the **Consent Decree**, may funds be withdrawn from a **Performing Party's Future Costs** sub-account for any purpose other than to pay or reimburse for its share of **Future Costs** of the **Work**.



(b) Each **Performing Party** may either draw upon the funds in its **Past Costs** sub-account to pay or reimburse for its share of **Future Costs** for the **Work** or may direct disbursement of any or all such funds to itself at any point and for any use or purpose in its sole discretion.

(c) Each **Performing Party** may direct the **Trustee** to invest any funds that are in its sub-accounts in accordance with the **Trust Agreement**. Investments of funds in **Future Costs** sub-accounts shall be retained in the **Future Costs** sub-accounts. Investment of funds in **Future Costs** sub-accounts must be maintained in liquid investments.

5. In the event that the provisions of Section N below are invoked against a **Performing Party**, any and all funds in that **Performing Party's Future Costs** sub-account shall remain in the **Trust** and shall be used to pay that **Performing Party's Performing Party Share of Future Costs** until all such funds have been expended.

E. Additional Settlements

1. The **Performing Parties** acknowledge and agree that additional settlements may occur after this **Agreement** is executed. Nothing in this **Agreement** is intended to prohibit the **Performing Parties** from entering into settlement agreements with other parties, including other **Allocation Parties**, that result in those parties becoming **Cash Out Parties** or **Funding Parties** consistent with the terms herein.

F. Division and Distribution of Settlement Funds Received from Settling Parties

1. All amounts due from current **Settling Parties** for **Past Costs** and the amounts due from the **Cash Out Parties** and the **Settling Federal Agencies** for **Future Costs** are set forth in the settlement agreements with those parties and/or the **Consent Decree**. Appendix B states the amounts of such funds that will be distributed to each **Performing Party's** sub-accounts.

2. **Settlement Funds** from **Cash Out Parties**, whether initially paid to the **Trust** or one of the **Performing Parties** under settlement terms, shall be distributed to **Performing Party Trust** sub-accounts as follows:

(a) Funds from **Cash Out Parties** for **Future Costs** (including any premium payments) shall be deposited into each **Performing Party's Future Costs** sub-account according to (i.e., in an amount proportionate to) **Performing Party Shares** as shown in Appendix B or as Appendix B is later modified in writing by unanimous agreement of the **Performing Parties**.

(b) Payments from **Cash Out Parties** for **Past Shared Costs** shall be divided equally among the **Performing Parties**, as shown in Appendix B, with the amounts deposited into each **Performing Party's Past Costs** sub-account.

(c) Payments from **Cash Out Parties** for each **Performing Party's Past Individual Costs**, as shown in Appendix B, shall be deposited into each **Performing Party's Past Costs** sub-account.

3. **Settlement Funds** that the **Performing Parties** receive from the **Funding Party** shall be divided and distributed as follows:

(a) Payments by the **Funding Party** of its share of advance estimated **Future Shared Costs** shall be deposited in a separate sub-account and shall be drawn upon by the **Trustee** to reimburse each **Contracting LDWG Member** for the **Funding Party's FAR Share of Future Shared Costs** as those costs are invoiced by each **Contracting LDWG Member**. The other **Performing Parties** shall pay their respective **Performing Party Shares** of the invoice reduced by the amount drawn from the **Funding Party's** sub-account to pay that invoice.

(b) The **Funding Party's** payments of its share for advance estimated **Future Individual Costs** shall be held in the same **Funding Party** sub-account, which shall also be drawn upon by the **Trustee** to reimburse each **Performing Party** for the **Funding Party's** share of its **Future Individual Costs** as those costs are reallocated on an annual basis among the **Performing Parties**. The **Trustee** shall only draw upon the **Funding Party's** sub-account for **Future Individual Costs** after the **Performing Parties** finalize the amounts of the **Future Individual Costs** to be reallocated per Section G below.

(c) The **Funding Party's** payment for **Past Shared Costs**, in the amount set forth in Appendix B, shall be divided equally among the **Performing Parties** and shall be deposited into each **Performing Party's Past Costs** sub-account.

(d) The **Funding Party's** payment of its **FAR Share** of each **Performing Party's Past Individual Costs**, in the amounts set forth in Appendix B, shall be deposited into each **Performing Party's Past Costs** sub-account.

(e) The **Funding Party's** payment of its **FAR Share** of **Interim Costs** shall be divided among the **Performing Parties** as follows:

(i) The **Funding Party's** payment for **Shared Interim Costs** shall be divided among the **Performing Parties** in the same way as they were paid by the **Performing Parties** (i.e., either equally for **Interim AOC Costs** or according to **Performing Party Shares** for **Interim Bridge Costs**) and shall be deposited into each **Performing Party's Past Costs** sub-account.

(ii) The **Funding Party's** payment for each **Performing Party's Individual Interim Costs** shall be deposited into each **Performing Party's Past Costs Trust** sub-account. The amount shall be determined after the **Performing Parties** finalize the amounts of their **Individual Interim Costs** to be reallocated per Section G below.

4. **Settlement Funds** that the **Performing Parties** receive from the **Settling Federal Agencies** shall be divided and distributed as follows:

(a) The **Performing Parties** shall assign \$132,000,000 of the **Settling Federal Agencies'** total settlement payment of \$140,000,000 to **Future Costs** (which includes the portion that may be considered a premium payment), which amount shall be divided and deposited into each **Performing Party's Future Costs** sub-account according to (i.e., in an amount proportionate to) **Performing Party Shares** as shown in Appendix B.

(b) The **Performing Parties** shall assign \$8,000,000 of the **Settling Federal Agencies'** total settlement payment of \$140,000,000 to **Past Costs**, which amount shall be divided into **Past Shared Costs** and **Past Individual Costs** in proportion to the percentage of each type of costs that make up the total amount (as shown in Appendix B, approximately 73% of the **Past Costs** total is **Shared Costs** and 27% is **Individual Costs**). The resulting amount of the **Settling Federal Agencies'** payment that constitutes **Past Shared Costs** shall be divided equally between the **Performing Parties**. The resulting amount of the **Settling Federal Agencies'** payment that constitutes **Past Individual Costs** shall be divided in proportion to the amount of **Past Individual Costs** incurred by each **Performing Party**. These amounts, which are shown in Appendix B, shall be deposited into each **Performing Party's Past Costs** sub-account.

5. The Disbursement Special Account (as that term is defined in the Paragraph 41 of the **Consent Decree**) funds disbursed by EPA pursuant to the **Consent Decree** shall constitute payment toward **Future Costs** and shall be deposited into each **Performing Party's** respective **Future Costs** sub-account according to (i.e., in amounts proportionate to) **Performing Party Shares**.

G. Reallocation of Costs Among the Performing Parties

1. **Purpose of Reallocation and Disclaimer Regarding Double Recovery**

Reallocation payments made under this Section do not constitute payment for or excuse payment by any non-settling party for its equitable share of **Response Costs**.

2. **Reallocation of Past Costs**

In reallocating **Past Costs** among the **Performing Parties**, each **Performing Party** shall owe its **FAR Share** of each other **Performing Party's Past Shared Costs** and **Past Individual Costs** as determined based on the performance of a net reallocation as set forth in Appendix C. Net reallocation payments for **Past Costs** shall be made within 60 days of the **Effective Date**, and shall be deposited into each **Performing Party's Past Costs** sub-account.

3. **Reallocation of Interim Costs**

(a) **Interim Cost Compilations**

(i) Within 90 days of the **Effective Date**, the **Contracting LDWG Members** shall compile the amount and supporting documentation for all **Shared Interim Costs**.

(ii) Within 90 days of the **Effective Date**, each **Performing Party** shall submit the amount and supporting documentation for its **Individual Interim AOC Costs** and its **Individual Interim Bridge Costs** to the other **Performing Parties** for their review. Each **Performing Party** shall submit in writing any questions or concerns about the **Individual Interim Costs** submitted by the other **Performing Parties** within 60 days of receipt. The **Performing Parties** shall resolve any questions or concerns about **Interim Costs** and finalize the amounts within 210 days of the **Effective Date**.

(b) **Shared Interim AOC Costs**

Each **Performing Party** shall owe its **FAR Share** of each other **Performing Party's Shared Interim AOC Costs** with a net reallocation performed. The **Trustee** shall calculate net reallocation payments and net reallocation payments shall be paid within 60 days of receipt of the **Trustee's** calculation to each **Performing Party's Past Costs** sub-account.

(c) **Individual Interim AOC Costs**

(i) Each **Performing Party's** amount of **Individual Interim AOC Costs** shall be adjusted, if needed, such that no **Performing Party** shall be entitled to an **Individual Interim AOC Costs** amount that is greater than 125% of the **Individual Interim AOC Costs** amount incurred by the **Performing Party** with the lowest **Individual Interim AOC Costs** amount for that year. The resulting amounts (whether or not adjusted) shall be referred to as the **Adjusted Individual Interim AOC Costs Amounts**.

(ii) Each **Performing Party** shall owe its **FAR Share** of each other **Performing Party's Adjusted Individual Interim AOC Costs Amount** with a net reallocation performed.

(iii) The **Trustee** shall calculate net reallocation payments and net reallocation payments shall be paid within 60 days of receipt of the **Trustee's** calculation to each **Performing Party's Past Costs** sub-account.

(d) **Interim Bridge Costs**

(i) No reallocation of **Shared Interim Bridge Costs** will be needed or will occur because each **Performing Party** will have paid its **Performing Party Share** of such costs.

(ii) Each **Performing Party's** amount of **Individual Interim Bridge Costs** shall be adjusted, if needed, such that no **Performing Party** shall be entitled to an **Individual Interim Bridge Costs** amount that is greater than

125% of the **Individual Interim Bridge Costs** amount incurred by the **Performing Party** with the lowest **Individual Interim Bridge Costs** amount for that year. The resulting amounts (whether or not adjusted) shall be referred to as the **Adjusted Individual Interim Bridge Costs Amounts**.

(iii) The **Funding Party's** payment of its **FAR Share** of each **Performing Party's Adjusted Individual Interim Bridge Costs Amount** shall be subtracted from the total amount of that **Performing Party's Adjusted Individual Interim Bridge Costs Amount**. The resulting amounts shall be referred to as **Adjusted Individual Interim Bridge Costs Reallocation Amounts**.

(iv) The **Performing Parties** shall reallocate **Adjusted Individual Interim Bridge Costs Reallocation Amounts** among themselves based on their **Performing Party Shares** (i.e., each **Performing Party** shall pay its **Performing Party Share** of the other **Performing Parties' Adjusted Individual Interim Bridge Costs Reallocation Amounts**).

(v) The **Trustee** shall calculate net reallocation payments and net reallocation payments shall be made within 60 days of receipt of the **Trustee's** calculation to each **Performing Party's Past Costs** sub-account.

#### 4. **Future Costs**

(a) No reallocation of **Future Shared Costs** will be needed or will occur because each **Performing Party** shall pay its **Performing Party Share** of such costs as they are incurred (except as specified in Appendix D only for distribution of orphan share relief).

(b) The following process applies to the reallocation of **Future Individual Costs** among the **Performing Parties**:

(i) Reallocation of **Future Individual Costs** shall occur on an annual basis for the prior year's costs.

(ii) The **Performing Parties** will agree by consensus on the documentation required for **Future Individual Costs**. Each **Performing Party** shall submit the amount and supporting documentation for its **Future Individual Costs** for the prior calendar year to the other **Performing Parties** for their review by April 1 of each year. Each **Performing Party** shall submit in writing any questions or concerns about the **Future Individual Costs** submitted by the other **Performing Parties** by June 1. The **Performing Parties** shall resolve any questions or concerns about **Future Individual Costs**, finalize the amounts and adjust them under Section G(4)(b)(iii) below, and by August 1, provide the documentation to the **Trustee**.

(iii) Each **Performing Party's** amount of **Future Individual Costs** shall be adjusted, if needed, such that no **Performing Party** shall be

entitled to a **Future Individual Costs** amount that is greater than 125% of the **Future Individual Costs** amount incurred by the **Performing Party** with the lowest **Future Individual Costs** amount for that year. The resulting amounts (whether or not adjusted) shall be referred to as the **Adjusted Future Individual Costs Amounts**.

(iv) The **Funding Party's** payment of its **FAR Share** of each **Performing Party's Adjusted Future Individual Costs Amount** shall be subtracted from the total amount of that **Performing Party's Adjusted Future Individual Costs Amount**. The resulting amounts shall be referred to as **Adjusted Future Individual Costs Reallocation Amounts**.

(v) Each **Performing Party** shall owe its **Performing Party Share** of each other **Performing Party's Adjusted Future Individual Costs Reallocation Amount** with a net reallocation performed.

(vi) The **Trustee** shall calculate net reallocation payments and net reallocation payments shall be paid within 60 days of receipt of the **Trustee's** calculation to the **Performing Party's Past Costs** sub-account as relevant.

#### H. Indemnification and Defense of Cash Out Parties or Other Settling Parties

1. In the event that the **Performing Parties** collectively have agreed or agree to indemnify and defend one or more of the **Cash Out Parties** or any other **Settling Party**, the **Performing Parties** agree to pay for indemnity and defense costs proportionate to their respective **Performing Party Shares**.

2. In the event that a **Performing Party** agrees to individually indemnify and defend one or more of the **Cash Out Parties** or any other **Settling Party**, the other **Performing Parties** shall have no obligation to join or contribute to such indemnity or defense except when otherwise provided for herein.

3. To the extent that the indemnity and defense promise made by any of the **Performing Parties** individually to one or more of the **Settling Parties** in a settlement executed by all the **Performing Parties** is deemed null and void by a court of law, then to the extent permitted by law, that **Performing Party** hereby agrees to compensate the other **Performing Parties** for its share of the associated expenses that the other **Performing Parties** pay for indemnity or defense of one or more of the **Settling Parties** (which would be calculated based on that party's **Performing Party Share**).

#### I. Application of Orphan Share Waiver

EPA, pursuant to the **Consent Decree**, is waiving some or all of its past or future oversight costs pursuant to EPA's orphan share policy. The application of EPA's orphan share waiver shall be dealt with according to the procedures laid out in Appendix D.

J. Double Recovery

To the extent that any of the **Performing Parties** receives a Double Recovery (as defined in the **Consent Decree** or any agreements with **Settling Parties**) and that **Performing Party** is obligated under the **Consent Decree** or any agreements with **Settling Parties** to reimburse one or more **Settling Parties** for that Double Recovery, it shall be the sole responsibility of the **Performing Party** who received the Double Recovery to pay such reimbursement(s). No **Performing Party** shall be responsible for a Double Recovery received by any other **Performing Party**.

K. No Admission of Liability; Reservation of Rights

1. This **Agreement** is given in compromise of disputed claims, and the obligations provided for by this **Agreement** are not to be construed as an admission of liability on the part of any **Performing Party**. Each of the **Performing Parties** denies any liability to or among the rest of the **Performing Parties**, and this **Agreement**, including the assumption of **Performing Party** roles and **Performing Party Shares**, is solely for the purpose of avoiding potential litigation.

2. Neither this **Agreement**, nor the obligations made pursuant to it, shall be offered as evidence by any person or received into evidence in any forum for any purpose other than the enforcement and/or implementation of the terms of this **Agreement**, except that the existence of the **Agreement** and the **Performing Parties'** agreement to cooperate in implementing the remedy may be offered into evidence in any forum for any purpose.

3. The **Performing Parties** are not through this **Agreement** releasing any claims or demands that any or all of them have or may have against any **Person** other than the other **Performing Parties**, and the **Performing Parties** reserve herein their respective rights to make claims against any and every other **Person**.

4. The **Performing Parties** reserve and may pursue, either jointly or individually, any claims and actions against any non-parties to this **Agreement** (other than those that the **Performing Parties** have collectively or individually agreed to defend and indemnify). The **Performing Parties** agree that the **Performing Party** pursuing such non-party may use portions of the **FAR** that relate to that non-party in settlement negotiations or litigation with that non-party.

(a) Prior to asserting any claims or taking any actions against non-parties to this **Agreement**, the **Performing Parties** will discuss and will endeavor to reach consensus about jointly pursuing such claims or actions. However, such decisions are ultimately up to each **Performing Party**.

(b) In the event that the **Performing Parties** decide to jointly sue one or more parties to recover **Response Costs**, the **Performing Parties** (i) shall pay the fees and costs for any agreed-upon joint representation of **Performing Parties** in such litigation according to their respective **Performing Party Shares**, (ii) shall continue to pay their **Performing Party Shares** of the costs of the **Work**, including any **Gap Costs**, regardless of the shares assigned by the court or shares agreed to as the result of a

settlement of the lawsuit, and (iii) shall disburse any judgment (or settlement) funds received according to the **Performing Party Shares**.

L. Mutual Release, Notices, and Remedies Under This Agreement

1. The **Performing Parties** mutually release each other for **Covered Matters** except for the reservation under Section L(4) below.

2. This **Agreement** may be pleaded as a complete defense to, and may be used as a basis for dismissing, any action purporting to assert a claim or demand for any **Covered Matters** released hereunder.

3. Once this **Agreement** takes effect, then none of the **Performing Parties** shall file claims against each other in any case for the **Covered Matters** except for claims for breach of this **Agreement**. In the event that a **Performing Party** takes an action or brings a claim against another **Performing Party** regarding a breach of this **Agreement**, that **Performing Party** shall not include claims or seek to litigate a **Performing Party's** liability or responsibility in contribution for **Covered Matters** under CERCLA, the Model Toxics Control Act, or common law. Nothing in this **Agreement** is intended to bar enforcement of access agreements entered into pursuant to the **Consent Decree**.

4. **Reservation regarding Early Action Areas.** Boeing and the County believe the **Consent Decree** bars any contribution claim by Cash Out Party Earle M. Jorgensen ("EMJ") for Jorgensen Forge **Early Action Area** costs. If a court were to disagree and permit EMJ to bring suit, Boeing and the County reserve claims between them for such costs; however, Boeing and the County agree they would endeavor to resolve claims between them through a separate mediation or settlement process, and to present a unified defense against EMJ's claims.

5. All notices required under this **Agreement** shall be in writing and sent by e-mail to a known and active email address as specified below. All notices under this Section are effective upon receipt, unless otherwise specified. In the case of emailed notices, there is a rebuttable presumption that such notices are received on the same day that they are sent. Any **Performing Party** may change the method, person, or address applicable to it by providing notice of such change to all **Performing Parties**.

As to the **City**:

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\*As of June 15, 2025

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M. Confidentiality

1. **Confidential Information.** From time to time, the **Performing Parties** may elect to disclose or transmit **Confidential Information** to each other or to any **Joint Contractors/Consultants** retained by the **Performing Parties** pursuant to this **Agreement**. The

**Performing Parties** intend that no claim of attorney-client privilege or work product immunity or any other privilege be waived by reason of such disclosure or transmittal.

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 **Performing Parties** intend by this Section to protect from disclosure all **Confidential Information** exchanged among any **Performing Parties** and their attorneys and consultants to the greatest extent permitted by law regardless of whether the exchange occurred before execution of this **Agreement** and regardless of whether the writing or document is marked "Confidential."

3. **Maintenance of Confidentiality.** Each **Performing Party** agrees that all **Confidential Information** received from (1) any other **Performing Party** or its individual consultant or counsel, or (2) any **Joint Contractor/Consultant** shall be held in confidence by the receiving **Performing Party**, and that such **Confidential Information** shall be used only in connection with the assertion of any common claims or defenses in connection with the **Work** and conducting such other activities as are necessary and proper to carry out the purposes of this **Agreement**. Each **Performing Party** shall take all necessary and appropriate measures to ensure that any person who is granted access to any **Confidential Information** or who participates in the **Work** or who otherwise assists any counsel or technical consultant in connection with this **Agreement** is familiar with the terms of this **Agreement** and complies with the terms hereof as they relate to the duties of such person.

4. **Anticipation of Litigation.** As parties who have been made jointly and severally responsible to perform the **Work** under the **AOC, UAO** and **Consent Decree**, the **Performing Parties** share a common interest and joint defense in anticipation of litigation related to the **Work** for the **Site**. This includes a common interest in developing and implementing this **Agreement** and other settlements with other parties. It is expressly agreed that the provision and/or sharing among the **Performing Parties** of attorney-client advice and attorney work product be considered **Confidential Information** under a joint defense privilege.

5. **Compelled Disclosure.** If any **Confidential Information** becomes the subject of an administrative or judicial order requiring disclosure by a **Performing Party**, the **Performing Party** 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 the joint defense privilege, attorney work product and/or attorney-client privilege, and seeking an order for protection from disclosure, or (ii) promptly notifying the **Performing Party** that generated the **Confidential Information**, if possible at least five (5) business days prior to any such required disclosure and informing the generating **Performing Party** of all material information concerning the required disclosure.

6. **Discovery Requests and Public Records Act Requests.** If any communications, information or documents exchanged among the **Performing Parties** that (i) were subject to a confidentiality provision in the **LDWG MOA**, (ii) relate to the **Allocation Process** or the **Allocation MOA**, (iii) relate to the **UAO** that the **Consent Decree** supersedes, (iv) relate to **Covered Matters**, the **Work**, the **Consent Decree**, this **Agreement**, settlements

with other parties, or (v) relate to pursuit of other parties for their share of **Response Costs** for **Covered Matters**, are the subject of a discovery request or a request for public records under the Washington Public Records Act, Chapter 42.56 RCW, the recipient of the request shall immediately inform the other **Performing Parties** of the request. The recipient shall endeavor to provide at least five business days' notice to the other **Performing Parties** before providing the requested documents to the requestor. The recipient of the request will assert any exemptions or privileges that it reasonably believes are applicable to the requested documents, but the recipient is not obligated to withhold documents. The other **Performing Parties** may take such steps as they deem appropriate to resist the production, which may include but are not limited to, seeking a restraining order, moving to quash a subpoena, or intervening in the litigation.

7. **Non-Confidential Information.** The **Performing Parties** may disclose information and communications that they reasonably believe are not **Confidential Information**. Further, nothing in this **Agreement** shall prevent the **Performing Parties** from disclosing to others or using in any manner information that the **Performing Party** can show:

(a) Was known by a **Performing Party** prior to execution of this **Agreement** and is not subject to the mediation privilege or another privilege, doctrine, or protection, or has been disclosed in a manner that would waive the applicable privilege, doctrine or protection or been published or become part of the public domain absent an unauthorized or unintentional disclosure in violation of this **Agreement**; or

(b) Has been furnished or made known to a **Performing Party** by third parties (other than those acting directly or indirectly for or on behalf of the **Performing Parties**) or was obtained by a **Performing Party** in some manner other than pursuant to this **Agreement**, as a matter of legal right, without any applicable restrictions on its disclosure; or

(c) Was in the **Performing Party's** possession prior to the disclosure thereof by or on behalf of any of the **Performing Parties** and was not subject to a separate confidentiality agreement between or among the **Performing Parties**.

8. **Confidentiality of this Agreement.** The **Performing Parties** agree that this **Agreement**, in and of itself, is not **Confidential Information**.

9. **Permitted Disclosures.** Nothing in this Section shall preclude any **Performing Party** from communicating **Confidential Information** with its insurers, auditors, and government contracting agencies as may be necessary, provided that the recipients agree to maintain the confidentiality of any information received pursuant to Section M(3) above.

10. **Prior Confidentiality Obligations.** Subject to Section K(4), nothing in this Section M is intended to alter the **Performing Parties'** confidentiality obligations pursuant to the **Allocation MOA** which confidentiality-related obligations remain in full force and effect.

N. Non-Payment

1. In the event that a **Performing Party** fails to pay its share of costs when due, that **Performing Party** shall have 120 days, or such longer time as the other **Performing**

**Parties** agree to allow, after receiving written notice of the non-payment to cure the non-payment.

2. If the non-paying **Performing Party** does not pay its share of costs before the end of the 120-day period, or such longer time as the other **Performing Parties** agree to allow, it becomes a **Defaulting Party**. Any **Defaulting Party** shall not be entitled to:

(a) absent the agreement of the non-defaulting **Performing Parties**, participate in the review of documents and submissions to **EPA**, or in consensus-based decision-making among the non-defaulting **Performing Parties** for implementation of this **Agreement** and **Work** required by the **Consent Decree**;

(b) distribute or direct distribution of any remaining funds in its **Past Costs** sub-account or its **Future Costs** sub-account to itself or for any purpose other than directing those funds be used to pay the outstanding amount of costs due;

(c) receive additional settlement funds from additional settling parties under Section E, which shall instead be directed to pay the outstanding amount of costs due to the **Performing Party** entitled to receive it or deposit it into the **Defaulting Party's Future Costs** sub-account;

(d) receive additional settlement funds from the **Funding Party** under Section F(3), which shall instead be directed to pay the outstanding amount of costs due to the **Performing Party** entitled to receive it or deposited into the **Defaulting Party's Future Costs** sub-account;

(e) receive reallocation payments for its **Future Individual Costs** under Section G(4)(b).

3. A **Defaulting Party** can cure its default and regain status as a **Performing Party** in good standing by paying the entire amount of its outstanding share of costs plus 12% interest, compounded daily, from the date the payments were originally due. If and when a **Defaulting Party** returns to status as a **Performing Party**, the provisions of Section N(2) shall not apply.

4. A **Defaulting Party** shall remain subject to all obligations of **Performing Parties**. The other non-defaulting **Performing Parties**, in any action or suit for breach of this **Agreement**, may seek among any other remedies specific performance of any or all such obligations.

O. Miscellaneous Provisions

1. **Governing Law and Forum Selection.** This **Agreement** shall be governed by, and construed and interpreted in accordance with, the laws of the State of Washington without regard to choice of law rules. Any claim to enforce this **Agreement** shall be brought in the United States District Court for the Western District of Washington. In the event the United States District Court for the Western District of Washington cannot or does not

exercise jurisdiction, the **Performing Parties** agree that any disputes arising under this **Agreement** shall be heard in King County Superior Court in Seattle.

2. **Agreement Freely Negotiated.** The **Performing Parties** have freely negotiated this **Agreement** and have read and are familiar with its terms. It is agreed that no provision in this **Agreement** shall be presumptively construed against any **Performing Party**.

3. **Counterparts.** This **Agreement** may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

4. **Entire Agreement.** This **Agreement** embodies the entire agreement and understanding of the **Performing Parties** with respect to the subject matter herein and supersedes any and all prior agreements, arrangements, and understandings entered into with respect to the subject matter herein, including the **LDWG MOA**.

5. **Severability.** The provisions of this **Agreement** shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision except as required by the terms of those provisions. If any provision of this **Agreement** is found by a Court of competent jurisdiction to be invalid or unenforceable, (1) the **Performing Parties** may substitute a suitable and equitable alternate provision in order to carry out their intent; and (2) the Court shall enforce the remainder of this **Agreement** to the extent appropriate in light of the totality of the circumstances.

6. **Headings for Reference Only.** The headings used herein are for reference only and shall not affect the construction of this **Agreement**.

7. **No Joint Venture, Partnership, or Agency Relationship.** Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship between or among the **Performing Parties**.

8. **Agreement Admissible for Purposes of Enforcing Agreement.** This **Agreement** shall be fully admissible in any proceeding to enforce the **Performing Parties'** rights and obligations hereunder, and the **Performing Parties** agree not to assert any objection to its admissibility.

9. **Successors, Assigns, and Heirs.** This **Agreement** shall be binding upon the successors and assigns of the **Performing Parties**. No assignment or delegation by a **Performing Party** of its obligations under this **Agreement** or of this **Agreement** will release the assigning **Performing Party** without the prior written consent of the other **Performing Parties**.

10. **Amendment.** No amendment, waiver of compliance with any provision or condition hereof, or consent pursuant to this **Agreement** will be effective unless evidenced by an instrument in writing signed by all of the **Performing Parties**.

11. **Authority to Sign.** The **Performing Parties** warrant to each other that all necessary authorizations and all other actions have been taken such that execution, delivery, and


performance of this **Agreement** and all other actions taken or to be taken in connection with this **Agreement** have been fully authorized.

12. **No Third Party Beneficiaries.** Nothing in this **Agreement** shall be construed to create any rights in, or grant any cause of action to, any person not a **Performing Party**. The preceding sentence shall not be construed to waive or nullify any rights that any person not a **Performing Party** may have under applicable law. Each **Performing Party** reserves any and all rights, defenses, claims, and liabilities, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence against any person not a **Performing Party**.

13. **Independent Counsel.** Each of the **Performing Parties** represents and warrants that, in connection with the negotiation and execution of this **Agreement**, it has been represented by independent counsel of its own choosing and that it has had an adequate opportunity to conduct an independent investigation of all facts, allegations, and circumstances with respect to all matters that are the subject of this **Agreement**.

DATED: January 9, 2025

**THE BOEING COMPANY**

By: 

Printed Name: Meredith Weinberg

Its: Counsel (Perkins Coie LLP)

DATED: \_\_\_\_\_, 2025

**CITY OF SEATTLE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: \_\_\_\_\_, 2025     **KING COUNTY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**APPENDIX A:  
ADDITIONAL TERMS FOR SETTLEMENT IMPLEMENTATION  
LOWER DUWAMISH WATERWAY**

These Additional Terms for Settlement Implementation (“**Additional Terms**”) supplement the Response Cost Settlement and Implementation Agreement for Lower Duwamish Waterway Superfund Site (“**Settlement and Implementation Agreement**”) between the City of Seattle, King County, and The Boeing Company (collectively, the “**Performing Parties**”), and address the **Performing Parties**’ implementation of any Consent Decree that the **Performing Parties** are all subject to for the **LDW Site**. These **Additional Terms** shall be attached to and shall become effective at the same time as the **Settlement and Implementation Agreement**.<sup>1</sup>

**I. Definitions**

Unless defined herein, capitalized terms used in these **Additional Terms** shall have the same meaning as in the **Settlement and Implementation Agreement**. In the event of any inconsistencies between these **Additional Terms** and the **Settlement and Implementation Agreement**, the definition or provision in the **Settlement and Implementation Agreement** shall prevail.

**II. No Separate Entity**

A. The **Performing Parties** are not forming a partnership, incorporated association, joint venture, principal/agent relationship, or any other legal entity. They are settling potential claims against each other and agreeing to work cooperatively to implement required **Response Actions** at the **LDW Site**. The **Performing Parties** are separate potentially responsible parties (“**PRPs**”) that are jointly and severally responsible for implementation of the **Work** required by the **Consent Decree**.

B. The **Performing Parties** are cooperating to implement the **Work** required by the Consent Decree as members of a performing **PRP** group referred to as the **Lower Duwamish Waterway Group** (“**LDWG**”). **LDWG** does not and shall not have any office, staff, or budget, and is not itself a governmental agency or entity.

C. A **Performing Party** may not: (a) bind other **Performing Parties** to any contract, agreement or other obligation related to the **LDW Site** or (b) incur liability related to the **LDW Site** on behalf of other **Performing Parties**, without agreement of all the **Performing Parties**.

D. In carrying out these **Additional Terms**, the **Performing Parties** agree to cooperate with each other under a standard of good faith and fair dealing. This standard is not a fiduciary duty, and, notwithstanding any other provision in these **Additional Terms**, no **Performing Party** owes a fiduciary duty to any other **Performing Party**.

<sup>1</sup> To the extent any obligations under the July 18, 2024 **Unilateral Administrative Order** (“**UAO**”) remain after these **Additional Terms** become effective, these **Additional Terms** also govern **Work** performed under the **UAO**.



### **III. Roles and Responsibilities**

Each of the **Performing Parties** shall appoint one or more designated representative(s) to each of three groups: 1) a Technical group; 2) a Manager group; and 3) a Director group. The **Performing Parties** may have more than one designated representative or additional staff attend meetings, but only one designated representative per **Performing Party** may state that **Performing Party's** position when a decision is being made. A **Performing Party** may change its designated representative(s) at any time.

A. Each group shall make decisions by consensus, meaning a unanimous vote by one designated representative per **Performing Party**. If the Technical group cannot reach consensus, they shall elevate the disputed issue to the Manager or Director group, as appropriate. If the Manager group cannot reach consensus, they shall elevate the disputed issue to the Director group.

B. Each group shall rotate administrative responsibilities among its members (setting meetings, developing agendas, and the like) or make other arrangements they deem appropriate to perform administrative tasks.

C. Each group shall confer and meet as often as they deem appropriate. Any **Performing Party** may call for a meeting and the other members shall promptly cooperate in setting one. As a guideline, the Technical group should meet at least once per month; the Manager group should meet at least once every two months; and the Director group should meet at least once every six months.

D. Technical group: The responsibilities of the Technical group shall include, but are not limited to: reviewing, evaluating and revising deliverables required by the applicable Statement of Work attached to the **Consent Decree** (or **UAO**) for the **LDW Site ("SOW")**, before they are provided to **EPA**; responding to **EPA** technical documents; responding to **EPA** and **Ecology** requests and directives; identifying needs for consultants and contractors to implement the applicable **SOW** and recommending to the Manager group that they be retained; participating in selecting consultants and contractors; directing consultants and contractors who are implementing the **SOW**; keeping the Manager and Director groups informed of the status of the **Work**; carrying out tasks assigned by the Manager group or Director group; and overseeing the development of cost forecasts.

E. Manager group: The responsibilities of the Manager group shall include, but are not limited to: evaluating and implementing approaches to strategic and policy issues; guiding communication with the public and with stakeholder groups; overseeing the work of the Technical group; communicating with **EPA**, **Ecology** and other regulatory agencies as appropriate; authorizing the retention of **Joint Contractors/Consultants**.

F. Director group: The responsibilities of the Director group shall include but are not limited to: making decisions on disputed issues; overseeing the Manager group; making strategic and policy decisions.

G. The **Performing Parties** may choose to employ a neutral person, such as a facilitator or mediator, if the Director group is unable to resolve a disputed issue.

H. The **Performing Parties** shall have equal access to all consultant and contractor work products, both drafts and final versions, including but not limited to: reports, sampling plans, analytical data, cost estimates, and memoranda.

#### IV. **Finance Group**

A. In addition to the groups identified in Section III, the **Performing Parties** may choose to establish a Finance group, composed of one representative from each **Performing Party**. A **Performing Party** may change its designated Finance group representative at any time. The Finance group shall be responsible for tasks the **Performing Parties** assign to it, which may include, but are not limited to:

1. Supervising the work of the **Trustee** for the **Trust**;
2. Advising the Manager group and Director group regarding the **Trust**, including investment and management of **Trust** funds;
3. In conjunction with the **Trustee**, Technical group, and **Joint Contractors/Consultants**, assisting with making determinations regarding the need for and amount of **Funding Party** assessments;
4. In conjunction with the **Trustee**, Technical group, and **Joint Contractors/Consultants**, assisting with the preparation of an annual forecast of response costs for the **Performing Parties**; and
5. In conjunction with the **Trustee**, Technical group, and **Joint Contractors/Consultants**, assisting with the development of a forecast of future costs for a duration of time set by the **Performing Parties** if requested by the Director group.

#### V. **Procedure for Payment of Shared Costs.**

A. This Section governs payment procedures for **Shared Costs** under the **Settlement and Implementation Agreement** and these **Additional Terms**. Each **Contracting LDWG Member** shall invoice the other **Performing Parties** for and provide copies of each invoice from any **Joint Contractor/Consultant** at a frequency agreed to by the **Performing Parties**, following receipt by the **Contracting LDWG Member** of invoice(s) that meet the **Contracting LDWG Member's** requirements. The other **Performing Parties** shall have at least ten (10) days to notify the **Contracting LDWG Member** if they believe the invoice: 1) Does not comport with requirements for documentation of costs that were agreed upon in accordance with Section VI(C)(3) below; 2) Includes charges for work outside the scope of the contract (as amended, if applicable); 3) Includes charges for work outside the scope of the **Consent Decree** (as amended, if applicable); 4) Includes charges for work pursuant to contract modifications that were disputed by another **Performing Party**. The **Contracting LDWG Member** shall respond to any such questions or concerns and the **Performing Parties** shall attempt to resolve any questions or concerns within ten (10) days. Any remaining questions or concerns shall be

resolved as described in Section III(A) or (G) above but shall not delay payment by the other **Performing Parties** of their shares of the **Shared Costs**. If the matter is resolved in a manner that means a **Performing Party** has overpaid the **Contracting LDWG Member**, the overage shall be reimbursed to the **Performing Party** that overpaid either by a direct payment from the **Contracting LDWG Member** or by the **Contracting LDWG Member** directing the **Trustee** to transfer funds from its **Past Costs** or **Future Costs** sub-account to the sub-account for the **Performing Party** that overpaid.

B. A **Contracting LDWG Member** shall pay its respective **Joint Contractor/Consultant** according to the terms of the applicable contracts with that **Joint Contractor/Consultant**. Once any questions or concerns raised by **Performing Parties** under Section V(A) for the same invoice(s) have been resolved, the **Contracting LDWG Member** shall seek reimbursement from the **Trust** for the **Funding Party's** 1.7406% share of those costs.

C. With respect to **Joint Contractors/Consultants**, the **Contracting LDWG Member** will keep track of salary, benefits and overhead for hours worked by its staff involved in contract development, procurement, oversight and management, and related expenses (such as publication of an RFP; travel costs to meet with contractors; and the like) and for legal review of contracts, access and tribal agreements and business interruption agreements. At least quarterly, each **Contracting LDWG Member** shall submit documentation to the other **Performing Parties** of such costs. The other **Performing Parties** shall have ten (10) days to notify the **Contracting LDWG Member** of any questions or concerns they have and the **Performing Parties** shall attempt to resolve any questions or concerns within ten (10) days. Once questions and concerns have been resolved, the **Contracting LDWG Member** shall seek payment from the **Funding Party's Future Costs** sub-account of the **Funding Party's** 1.7406% share of those costs.

D. The **Contracting LDWG Member** will submit documentation of **Shared Costs** to the **Trust**. The other **Performing Parties** may choose to pay their share (of the remaining amount after deduction of the **Funding Party's** 1.7406% share) of the **Shared Costs** directly to the **Contracting LDWG Member** or direct the **Trustee** to pay their share out of the **Performing Party's Future Costs** or **Past Costs** sub-account.

E. The **Performing Parties** shall agree on the documentation required for internal staff time in order for a **Performing Party's** internal staff costs to be reallocated, as provided in the **Settlement and Implementation Agreement**.

F. The amount included in any invoice to the **City** should be split between Seattle City Light and Seattle Public Utilities with 85% of the invoiced amount being charged to Seattle Public Utilities and 15% of the invoice amount being charged to Seattle City Light.

G. The **Shared Costs** of the cPAH work the **City** and **County** voluntarily agreed to perform that is no longer required by the **Consent Decree** ("**cPAH-specific Costs**") are to be documented separately and invoiced and paid at an equal percentage for the **City** and **County** (half each). These **cPAH-specific Costs** are to be invoiced and paid at the same time as set forth above in this section. **Individual Costs** consisting of staff time for **cPAH-specific Costs** work will not be separately compiled, invoiced, and reallocated.

## **VI. Selection of Joint Contractors/Consultants**

A. The following **Performing Parties** have hired the following **Joint Contractors/Consultants**:

1. The **County** has hired a contractor to construct the Upper Reach (“UR”) Remedy (“**UR Construction Contractor**”). The **UR Construction Contractor’s** scope shall be according to the **SOW**, modifications to the **SOW** that are required by **EPA**, the 100% design bid package, and associated **EPA**-approved construction changes.

2. The **County** has hired a consultant for design and outreach support during **UR Remedy** construction as well as for certain other tasks provided for in the **SOW** (“**UR Construction Consultant**”). The **UR Construction Consultant’s** scope shall be according to the **SOW**, any modifications to the **SOW** that are required by **EPA**, and any other scope items approved by the **Performing Parties**.

3. The **City** has hired a consultant to provide construction management and support and program management support for construction of the **Remedy** (“**Construction Management Consultant**”). The **Construction Management Consultant’s** scope shall be consistent with the **SOW**, any applicable **County** and **City** requirements for this contract, any modifications to the **SOW** that are required by the **EPA**, and any other scope items that are approved by the **Performing Parties**.

4. The **City** has hired a **Joint Contractor/Consultant** for design in the Middle Reach.

5. The **Performing Parties** have agreed that the **City** will hold the contract for a **Joint Contractor/Consultant** to work on design in the Lower Reach.

6. The **Performing Parties** have agreed that **Boeing** will hold the contract for the **Trustee** who shall be a **Joint Contractor/Consultant**, and whose scope shall include holding monies in a **Trust**, managing and tracking settlement payments by other parties, tracking invoices for other **Joint Contractors/Consultants**, and performing other tasks as assigned.

B. The **Performing Parties** will need to hire other **Joint Contractors/Consultants** to perform the **Work**. Following agreement by the Manager group or Director group, any **Contracting LDWG Member** may enter into a contract for a portion of the **Work** on behalf of the **Performing Parties**.

C. The **Performing Parties** will employ consensus-based decision-making for selecting **Joint Contractors/Consultants**, subject to the **Contracting LDWG Member’s** contracting and legal requirements.

1. Joint Consultant Selection. Before candidates are interviewed and/or scored, each **Performing Party** shall identify any candidate that has done work for the **Performing Party** related to the **LDW Site** and the **Performing Parties** shall reach an agreement concerning which consultants have a conflict of interest based on their work for individual **Performing Parties** or agree on mitigating measures necessary to address a conflict

of interest. The **Contracting LDWG Members** will execute contracts with the **Joint Consultants** that are selected using the agreed upon selection process.

2. Joint Contractor Selection. The **Performing Parties** shall agree by consensus on the package that will be put out for bid by potential **Joint Contractors**. They will also agree by consensus on provisions regarding conflicts of interest, including identifying potential bidders that a **Performing Party** believes would have a conflict of interest and any mitigating measures that could address a conflict of interest. Once bids are received, the **Contracting LDWG Member** shall select the **Joint Contractor** according to its own internal requirements and all applicable laws.

3. For **Joint Contractors/Consultants** retained before November 2024, the documentation requirements for invoices are set forth in their contracts. For **Joint Contractors/Consultants** retained after November 2024, the **Performing Parties** shall agree on documentation requirements for invoices from those **Joint Contractors/Consultants** before they are retained.

4. The **Contracting LDWG Member** shall confer with the other **Performing Parties** and seek their concurrence to incur any significant additional commitments or costs (for example, through access, relocation, or tribal agreements, or contract modifications (change orders) to construction contracts); however, when a contract modification is necessary to comply with deadlines set by **EPA**, or is necessary to avoid construction delays, or is necessary to avoid payments to or claims by the contractor for delays, then the **Contracting LDWG Member** may issue the change order without agreement of the other **Performing Parties**. The disagreement shall be resolved in the same manner as other issues.

## VII. Oversight of Joint Contractors/Consultants

A. The Technical group shall determine the types of decisions regarding work by **Joint Contractors/Consultants** that are substantive and those that are routine. Substantive decisions regarding **Joint Contractors'/Consultants'** work product will be made by consensus of the **Performing Parties**. Such decisions will be communicated to each **Joint Contractor/Consultant** by the applicable **Contracting LDWG Member**. Routine decisions may be made by the **Contracting LDWG Member**.

B. The **Joint Contractors/Consultants** will not communicate with third parties, including **EPA** or **Ecology** personnel, on substantive matters without first notifying the Technical group and receiving authorization for the communication. Such authorization will be made by consensus of the **Performing Parties** and communicated by the applicable **Contracting LDWG Member**. However, **Joint Contractors/Consultants** may communicate with **EPA** and **Ecology** regarding routine matters and in emergency situations involving an imminent hazard to people, property, the environment, or natural resources. The Technical group will determine the types of communications that are substantive and the types that are routine.

C. The Technical group will determine the types of work products and analytical data that are prepared, developed or generated by the **Joint Contractors/Consultants** that must

be provided to all **Performing Parties** for review prior to submission to **EPA** or any other third party. For such documents, **Performing Parties** shall be given at least fifteen (15) business days to review and comment on the documents before they are provided to **EPA** or any other third party, unless **EPA's** deadlines require that a shorter review time be provided. The **Contracting LDWG Member** shall compile and respond to all **Performing Party** comments and distribute to all **Performing Parties**. The project manager for each respective **Contracting LDWG Member** will direct each **Joint Contractor/Consultant** as needed on consensus changes to work product.

### **VIII. Responsibility for Changes to the Schedule**

The **Performing Parties** are jointly responsible for delays to the schedule for the **Work**, as set forth in the **SOW**, including delays related to acquisition of property rights required for the **Work**.

### **IX. Cooperation on Model Toxics Control Act Grants**

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

### **X. Indemnity and Insurance**

A. For all contracts executed with **Joint Contractors/Consultants** with the exception of the **Trustee**, the **Contracting LDWG Member** will include provisions obtaining indemnities and additional insured status for all **Performing Parties** and, as required by the **UAO** and **Consent Decree**, for the United States and the State of Washington. Costs incurred by a **Contracting LDWG Member** in fulfilling obligations to insure or indemnify other **Performing Parties**, the United States and the State of Washington are **Shared Costs**.

B. In the event that one **Performing Party** indemnifies a third party for the willful or negligent actions of another **Performing Party** or its contractor(s) pursuant to an agreement with that third party relating to the **Work**, then the latter **Performing Party** shall either take over that indemnity obligation or indemnify the former **Performing Party** for the indemnity being provided to the third party to the extent of the **Performing Party** or its contractor's negligence or willful conduct.

### **XI. Common Legal Counsel**

A. The **Performing Parties** may engage common counsel to pursue non-settling **PRPs** who may be liable for **Response Costs** at the **LDW Site** or to perform other services on matters of common interest.

B. Common counsel will be required to provide the **Performing Parties** with an annual budget for anticipated fees/costs.

C. Common counsel fees and costs and any other litigation expenses that are authorized by the **Performing Parties** will be paid for by the **Performing Parties** according to their **Performing Party Shares**.

D. The **Performing Parties** may establish a Legal group, consisting of legal representative(s) from each **Performing Party**. The responsibilities of the Legal group, if established, shall include but not be limited to overseeing the work of common counsel, including approving proposed budgets, directing litigation strategy, and advising the Director group on significant litigation decisions.

## **XII. Communication with regulators and others**

The **Performing Parties** agree to confer with each other prior to having substantive communications regarding the **LDW Site** with **EPA, Ecology**, tribes, other regulatory agencies, the public, stakeholders and the news media. The Technical group may identify types of communications that are routine, rather than substantive, however, there may be other communications that are not substantive. The **Performing Parties** shall endeavor to make any such communications in the best interests of all **LDWG** members. If a **Performing Party** has substantive communications regarding the **LDW Site** with any such entities, the communication shall be promptly disclosed to the other **Performing Parties**.

## **XIII Bar on testimony**

Performing Parties shall request that any **Joint Consultants/Contractors** that are retained to implement the **Work** with agreement of the **Performing Parties** include terms in their relevant contract that the **Joint Consultant/Contractor** shall not testify against any of the **Performing Parties** in litigation or in any other proceeding concerning the **LDW Site**, without the consent of all the **Performing Parties** and/or in response to a subpoena. Provided that, a **Performing Party** that becomes a **Defaulting Party** shall not be able to bar the other **Performing Parties** from using such consultants and contractors in litigation or other proceedings relating to breach of the **Settlement and Implementation Agreement**.

## **XIV Amendment.**

These **Additional Terms** may be amended in writing by unanimous consent of the **Performing Parties** as set forth in the **Settlement and Implementation Agreement**.

## APPENDIX B: Amount and Distribution of Settlement Funds

Party	PAST COSTS (Shared)	PAST COSTS (Individual)	TOTAL PAST COSTS	TOTAL FUTURE COSTS	TOTAL AMOUNT
Cash Out Parties	\$ 6,951,390.68	\$ 2,256,801.67	\$ 9,208,192.35	\$ 131,910,702.80	\$ 141,118,895.15
Funding Parties	\$ 982,779.71	\$ 319,064.05	\$ 1,301,843.76	N/A	\$ 1,301,843.76
Settling Federal Agencies	\$ 5,838,669.67	\$ 2,161,330.33	\$ 8,000,000.00	\$ 132,000,000.00	\$ 140,000,000.00
<b>Total</b>	\$ 13,772,840.05	\$ 4,737,196.06	\$ 18,510,036.11	\$ 263,910,702.80	\$ 282,420,738.91

### Distribution of Settlement Funds to Boeing

	Boeing (Past Costs)	Boeing (Future Costs)	Total to Boeing
Cash Out Party Payments	\$ 3,543,707.23	\$ 70,690,412.35	\$ 74,234,119.58
Funding Party Payments	\$ 501,005.30	N/A	\$ 501,005.30
SFA Payments	\$ 2,941,163.33	\$ 70,738,266.36	\$ 73,679,429.69
<b>GRAND TOTALS</b>	\$ 6,985,875.87	\$ 141,428,678.71	\$ 148,414,554.57



**Distribution of Settlement Funds to City**

	<b>City (Past Costs)</b>	<b>City (Future Costs)</b>	<b>Total to City</b>
<b>Cash Out Party Payments</b>	\$ 2,651,572.61	\$ 41,503,156.70	\$ 44,154,729.31
<b>Funding Party Payments</b>	\$ 374,876.32	N/A	\$ 374,876.32
<b>SFA Payments</b>	\$ 2,548,228.41	\$ 41,531,252.34	\$ 44,079,480.75
<b>GRAND TOTALS</b>	\$ 5,574,677.34	\$ 83,034,409.03	\$ 88,609,086.38

**Distribution of Settlement Funds to County**

	<b>County (Past Costs)</b>	<b>County (Future Costs)</b>	<b>Total to County</b>
<b>Cash Out Party Payments</b>	\$ 3,012,912.51	\$ 19,717,133.76	\$ 22,730,046.26
<b>Funding Party Payments</b>	\$ 425,962.14	N/A	\$ 425,962.14
<b>SFA Payments</b>	\$ 2,510,608.25	\$ 19,730,481.31	\$ 22,241,089.56
<b>GRAND TOTALS</b>	\$ 5,949,482.90	\$ 39,447,615.06	\$ 45,397,097.96

**APPENDIX C:  
PAST COST REALLOCATION AMONG PERFORMING PARTIES**

The net reallocation of Past Costs among the Performing Parties is based on separate reallocation for Past Shared Costs versus Past Individual Costs based on FAR Shares.

Performing Party Past Shared Costs through 2022:

- LDWG Past Shared Costs (3-party total): \$54,784,918.50
- (Each): \$18,261,639.50

The following table summarizes the agreed-upon Past Cost amounts subject to reallocation for each Performing Party:

<b>Performing Party</b>	<b>Past Shared Costs</b>	<b>Past Individual Costs</b>	<b>Total Past Costs</b>
Boeing	\$18,261,639.50	\$9,962,775.00	\$28,224,414.50
City	\$18,261,639.50	\$6,028,144.00	\$24,289,783.50
County	\$18,261,639.50	\$5,651,436.70	\$23,913,076.20
<b>Total</b>	\$54,784,918.50	\$21,642,355.70	\$76,427,274.20

Reallocation of Past Shared Costs through 2022:

- Boeing owes City its 30.1091% share of City's \$18,261,639.50 (\$5,498,415.30) minus the City's 17.6774% share of Boeing's \$18,261,639.50 (\$3,228,183.06) = \$2,270,231.70.
- Boeing owes County its 30.1091% share of County's \$18,261,639.50 (\$5,498,415.30) minus the County's 8.3981% share of Boeing's \$18,261,639.50 (\$1,533,630.75) = \$3,964,784.55.
- City owes County its 17.6774% share of the County's \$18,261,639.50 (\$3,228,183.06) minus the County's 8.3981% share of the City's \$18,261,639.50 (\$1,533,630.75) = \$1,694,552.31.

Reallocation of Past Individual Costs through 2022:

- Boeing owes City its 30.1091% share of the City's \$6,028,144.00 (\$1,815,019.91) minus the City's 17.6774% share of Boeing's \$9,962,775.00 (\$1,761,159.59) = \$53,860.32.
- Boeing owes County its 30.1091% share of County's \$5,651,436.70 (\$1,701,596.73) minus the County's 8.3981% share of Boeing's \$9,962,775.00 (\$836,683.81) = \$864,912.92.

- City owes County its 17.6774% share of the County's \$5,651,436.70 (\$999,027.07) minus the County's 8.3981% share of City's \$6,028,144.00 (\$506,249.56) = \$492,777.51.

Net Reallocation of Costs through 2022:

- Boeing owes the County \$4,829,697.46 (\$3,964,784.55 + \$864,912.91)
- Boeing owes the City \$2,324,092.02 (\$2,270,231.70 + \$53,860.32)
- The City owes the County \$2,187,329.82 (\$1,694,552.31 + \$492,777.51)

Appendix D: Distribution of Orphan Share Relief

The Performing Parties shall apply among themselves the amounts that EPA waives of its past and future oversight costs as follows:

1. EPA has agreed to waive its unreimbursed Past Response Costs in the amount of \$6.2 million pursuant to its orphan share policy. If EPA had not agreed to waive that amount, all of the Settling Parties would have paid their FAR Shares of such costs as part of the global settlement. Boeing would have owed its 30.1091% FAR Share, which amounts to \$1,866,764.20.
2. In his Final Allocation Report, the Allocator assigned a significant portion of the orphan share to the City and County.
3. Because EPA is forgiving \$6.2 million in unreimbursed Past Response Costs under its orphan share policy, Boeing will not have to pay EPA its FAR Share of EPA's Past Response Costs (\$1,866,764.20). In order for EPA's forgiveness of its unreimbursed Past Response Costs to benefit only the Performing Parties who were assigned the orphan shares in the Allocation (i.e., City and County), Boeing will pay the amount it would have paid to EPA to the City and County instead.
4. Boeing shall pay the \$1,866,764.20 in three equal installments of \$622,254.73. Boeing shall pay 66.7% of each installment to the City (\$415,043.91) and 33.3% of each installment to the County (\$207,210.82). Boeing shall pay the first installment no later than 60 days after the Effective Date, the second installment no later than one year and 60 days after the Effective Date, and the third installment no later than two years and 60 days after the Effective Date.
5. Pursuant to Paragraph 34(b) of the Consent Decree, EPA has agreed to forgive 50% of its Future Response Costs up to a total of \$16.9 million pursuant to its orphan share policy.
6. Under Section D.1 of the Response Cost Settlement and Implementation Agreement, the Performing Parties have established a method to pay for the cost of the Work required by the Consent Decree, including EPA oversight costs, according to their

- Performing Party Shares (which are consistent with their FAR shares) to ensure 100% of the costs for the Work required by the Consent Decree are paid. If not for EPA's forgiveness of a portion of its Future Response Costs, the Performing Parties would pay their Performing Party Shares of such costs to EPA, less any Funding Party payment for such costs. This Appendix adjusts the amounts subsequently owed by the Performing Parties for certain future EPA oversight costs only for the purpose of distributing the benefit of orphan share relief among the Performing Parties.
7. The City and County are entitled to the majority of the orphan share relief as described in Paragraph 2 above. However, because one allocation party (Kaiser/Hanson) went into bankruptcy after the Allocator finalized the allocation, Boeing's Performing Party Share includes a portion of the orphan share. Boeing's Performing Party Share (53.5896%) of Kaiser/Hanson's FAR Share (0.696%) is 0.373%. Boeing's Performing Party Share minus its share of Kaiser/Hanson's FAR Share is 53.2166% ("Owed Share").
  8. Of the 50% of oversight costs that EPA does not forgive, the Funding Party shall be responsible for its FAR Share and Boeing shall be responsible for the remainder. Boeing also shall pay the balance of its Owed Share of 53.2166% of EPA's total oversight costs minus the 50% paid to EPA for oversight costs (which equals 3.2166%) of EPA's total oversight costs to the City and County on a 66.7%/33.3% basis within 60 days of receiving an invoice from EPA for oversight costs.
  9. If and when the total amount of EPA's future oversight costs that EPA has forgiven exceeds \$16.9 million, such that no further forgiveness is due or applied, the Performing Parties shall begin to pay their Performing Party Shares of all subsequently-invoiced EPA oversight costs (less the Funding Party's payment of such costs) consistent with Section D.1 of the Response Cost Settlement and Implementation Agreement.
  10. Payments made by Boeing to the City and County shall be deposited as the recipient directs into their respective Past or Future Cost Trust sub-accounts.