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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

UNITED STATES OF AMERICA, ON
BEHALF OF THE NATIONAL OCEANIC
AND ATMOSPHERIC
ADMINISTRATION AND THE UNITED
STATES DEPARTMENT OF THE
INTERIOR; THE STATE OF
WASHINGTON THROUGH THE
WASHINGTON DEPARTMENT OF
ECOLOGY; MUCKLESHOOT INDIAN
TRIBE; SUQUAMISH TRIBE,

Plaintiffs,

v.

THE BOEING COMPANY,

Defendant.

No. CV-10-758 RSM
CONSENT DECREE

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. RECITALS 1

III. JURISDICTION AND VENUE 6

IV. PARTIES BOUND 6

V. DEFINITIONS 7

VI. GENERAL PROVISIONS 10

VII. PROJECT DEVELOPMENT 11

VIII. ACCESS TO INFORMATION AND PROJECT SITE 20

IX. SELECTION OF CONTRACTORS 22

X. REIMBURSEMENT OF RESTORATION IMPLEMENTATION
COSTS 22

XI. PAST COST REIMBURSEMENT 24

XII. FUND FOR PERMANENT STEWARDSHIP OF PROJECT SITE .. 25

XIII. FAILURE TO MAKE TIMELY PAYMENTS 26

XIV. DISPUTE RESOLUTION 26

XV. STIPULATED PENALTIES 29

XVI. FORCE MAJEURE 32

XVII. INDEMNIFICATION; INSURANCE 34

XVIII. COVENANT NOT TO SUE BY PLAINTIFFS 36

XIX. RESERVATIONS OF RIGHTS 37

XX. COVENANT NOT TO SUE BY DEFENDANT 38

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION 39

XXII. RETENTION OF RECORDS 40

XXIII. NOTICES AND SUBMISSIONS 42

XXIV. EFFECTIVE DATE 43

XXV. RETENTION OF JURISDICTION 44

1 XXVI. INTEGRATION/APPENDICES 44

2 XXVII. MODIFICATION 44

3 XXVIII. ENFORCEMENT 45

4 XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 45

5 XXX. TERMINATION 45

6 XXXI. SIGNATORIES/SERVICE 46

7 XXXII. FINAL JUDGMENT 46

8

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I. INTRODUCTION

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2 The United States of America (“United States”), on behalf of the United
3 States Department of Commerce, acting through the National Oceanic and
4 Atmospheric Administration (“NOAA”), and the United States Department of
5 the Interior; the State of Washington (the “State”) through the Washington State
6 Department of Ecology; the Suquamish Tribe; and the Muckleshoot Indian Tribe
7 (collectively, “Plaintiffs”), have filed a complaint in this case against defendant
8 The Boeing Company (“Defendant” or “Boeing”) pursuant to Section 107 of the
9 Comprehensive Environmental Response, Compensation and Liability Act of
10 1980, as amended (“CERCLA”), 42 U.S.C. § 9607; the Model Toxics Control
11 Act (“MTCA”), chapter 70.105D RCW; Section 311 of the Clean Water Act
12 (“CWA”), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act
13 of 1990 (“OPA”), 33 U.S.C. § 2702(b)(2)(A) for Covered Natural Resource
14 Damages (as defined below). This Consent Decree (the “Decree”) addresses the
15 claims asserted in the Complaint against the Defendant.

II. RECITALS

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17 A. The United States Department of Commerce, acting through
18 NOAA; the United States Department of the Interior; the Washington
19 Department of Ecology on behalf of the State of Washington; the Suquamish
20 Tribe, and the Muckleshoot Indian Tribe (collectively, “the Trustees” and,
21 individually, a “Trustee”), under the authority of Section 107(f) of CERCLA, 42
22 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), 40 C.F.R. Part
23 300, subpart G, and RCW 70.105D.040(2), serve as trustees for natural resources
24 for the assessment and recovery of damages for injury to, destruction of, or loss
25 of natural resources under their trusteeship.

26 B. Investigations conducted by the Trustees and others have detected
27 hazardous substances in the sediments, soils and groundwater of the Lower
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1 Duwamish Waterway, including but not limited to arsenic, antimony, cadmium,
2 chromium, copper, mercury, nickel, lead, zinc, bis(2 ethylhexyl) phthalate,
3 hexachlorobenzene, hexachlorobutadiene, polychlorinated biphenyls (PCBs), and
4 polycyclic aromatic hydrocarbons (PAHs). Overall, the Trustees have
5 documented the presence of over 30 hazardous substances in the marine
6 sediments of the Lower Duwamish Waterway.

7 C. The Trustees began assessing damages to natural resources in the
8 Lower Duwamish Waterway in 1990 by finding that hazardous substances had
9 been released into the Lower Duwamish Waterway; that natural resources had
10 likely been injured by the releases; that data sufficient to pursue a natural
11 resource damage assessment were available or could likely be obtained at a
12 reasonable cost; and that, without further action, future response activities would
13 not adequately remedy the resource injuries. *See, e.g.*, NOAA, Lower Duwamish
14 Waterway Sediment Characterization Study Report (Dec. 10, 1998). Based on
15 these findings, the Plaintiffs concluded that no further natural resource damage
16 assessment is required to effectuate the purposes of this Consent Decree, with
17 respect to Defendant.

18 D. Plaintiffs have filed a complaint (the "Complaint") pursuant to
19 Section 107 of CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW;
20 CWA, 33 U.S.C. § 1251 et seq.; and OPA, 33 U.S.C. § 2701 et seq., seeking
21 recovery from Defendant of damages for injury to, destruction of, and loss of
22 natural resources resulting from releases of hazardous substances into the Lower
23 Duwamish Waterway, including the costs of assessing the damages.

24 E. Plaintiffs allege in the Complaint that Defendant owns or in the past
25 owned and/or operated real property or facilities on, adjacent to, or near the
26 Lower Duwamish Waterway. Plaintiffs further allege that from each of such
27 sites identified below by tax parcel number, storm water, surface water runoff,
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1 wastewater, other process discharges, and/or groundwater have flowed to the
2 Lower Duwamish Waterway. Plaintiffs also allege that investigations have
3 detected hazardous substances in soils, groundwater or sediments on or in those
4 properties or facilities. Some of these hazardous substances are found in the
5 sediments of the Lower Duwamish Waterway.

6 F. Plaintiffs further allege that hazardous substances have been or are
7 being released to the Lower Duwamish Waterway from properties or facilities
8 owned and/or operated by Defendant through direct discharge, surface water
9 runoff, groundwater and/or seeps, and that those hazardous substances have
10 caused injury to, destruction of and loss of natural resources in the Lower
11 Duwamish Waterway under Plaintiffs' trusteeship, including fish, shellfish,
12 invertebrates, birds, marine sediments, and resources of cultural significance.
13 Plaintiffs further allege that each of them and the public have suffered the loss of
14 natural resource services (including ecological services as well as direct and
15 passive human use losses) as a consequence of those injuries.

16 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator
17 of one or more facilities; (b) a person who at the time of disposal or release of
18 any hazardous substance owned or operated any facility at which such hazardous
19 substances were disposed of; (c) a person who by contract, agreement, or
20 otherwise arranged for disposal or treatment, or arranged with a transporter for
21 transport for disposal or treatment, of hazardous substances owned or possessed
22 by such person, by any other party or entity, or otherwise generated any
23 hazardous substance disposed of or treated at any facility or incineration vessel
24 owned or operated by another party or entity and containing such hazardous
25 substances; and/or (d) a person who accepts or accepted any hazardous
26 substances for transport to disposal or treatment facilities, incineration vessels or
27 sites selected by such person from which there is a release or a threatened release
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1 of a hazardous substance that causes the incurrence of response costs within the
2 meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

3 H. Defendant denies all or portions of the allegations of the Complaint,
4 and all or portions of the allegations contained in Paragraphs E, F, and G, of this
5 Section.

6 I. Although the Trustees have initiated but not yet completed a natural
7 resource damage assessment for the Lower Duwamish Waterway, the Trustees
8 have developed and analyzed information sufficient to support a settlement that
9 is fair, reasonable and in the public interest.

10 J. In settlement of this action, Defendant has agreed, in lieu of and as
11 equivalent to monetary damages, to implement the habitat restoration project
12 described in Appendix A (“Boeing Habitat Project” or the “Project”). Defendant
13 has also agreed to provide funds to support project implementation costs
14 expended by the Trustees, to fund the permanent stewardship of the Project Site,
15 and to reimburse natural resource damage assessment costs incurred by the
16 Trustees.

17 K. The Project described in Appendix A is to be developed in three
18 phases. The first phase is the design and initial construction of the project. The
19 second phase is a ten year period following completion of project construction
20 during which Defendant is responsible for developing and monitoring vegetation
21 and habitat at the project site. During this ten-year period, the Defendant may be
22 required to take a number of active steps to achieve the vegetation and habitat
23 success criteria for the Project that are presented in Appendix A. The third phase
24 is an additional twenty-year period during which Defendant is responsible for
25 maintaining the vegetation and habitat developed during the second phase.
26 During and after all three phases of the Project, Defendant will take the measures
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1 needed to ensure that the Project Site remains available for, and dedicated to the
2 use of, the Project.

3 L. The Trustees have determined that the timely actions and payment
4 of certain costs to be undertaken by Defendant under this Consent Decree are
5 appropriate and necessary to protect and restore the natural resources allegedly
6 injured as a result of alleged actions or omissions of Defendant that are
7 addressed herein, and that such timely actions and expenditures are adequate to
8 redress Defendant's responsibility for the Covered Natural Resource Damages
9 that are the subject of this proceeding.

10 M. Defendant does not admit any liability to Plaintiffs arising out of the
11 transactions or occurrences alleged in the Complaint and the matters alleged in
12 this Consent Decree.

13 N. Plaintiffs and Defendant (collectively, the "Parties" and,
14 individually, a "Party") agree that this Decree addresses the resolution of
15 Plaintiffs' claims for Covered Natural Resource Damages as defined below, and
16 that neither Plaintiffs nor Defendant will use this settlement (including the terms
17 of this Decree and the basis for the compromise contained in other documents
18 filed in this action in support of this Decree) in any other forum, whether in
19 litigation, administrative proceedings, formal or informal negotiations, or
20 otherwise, to resolve, attempt to resolve, or in any way influence the resolution
21 of, other claims between Plaintiffs and Defendant in the Lower Duwamish
22 Waterway (as defined below); provided, however, that this provision does not
23 limit Plaintiffs or Defendant from using otherwise-available factual information
24 referenced in documents filed in support of this Decree. The restriction in the
25 preceding sentence applies to, but is not limited to, claims that the United States
26 (on behalf of the United States Environmental Protection Agency) and the State
27 may have against Defendant under CERCLA, the Solid Waste Disposal Act (as
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1 amended by the Resource Conservation and Recovery Act), 42 U.S.C. §§ 6901 et
2 seq., or MTCA in the Lower Duwamish Waterway (as defined below).

3 O. Plaintiffs and Defendant agree that if Defendant wishes to raise any
4 concerns with EPA regarding the effect of DSOA Work (as defined below) on the
5 Project to be constructed by Defendant pursuant to this Consent Decree,
6 Defendant will raise those concerns solely with the EPA Region that issued the
7 DSOA Order (as defined below); provided, however, that this provision does not
8 authorize any disputes under this Decree to be resolved under the dispute
9 resolution provisions of the DSOA Order.

10 P. Plaintiffs and Defendant agree, and this Court by entering this
11 Decree finds, that this Decree has been negotiated by the Parties in good faith;
12 that settlement of this matter will avoid prolonged and complicated litigation
13 between the Parties; and that this Decree is fair, reasonable, and in the public
14 interest.

15 NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

16 III. JURISDICTION AND VENUE

17 1. This Court has jurisdiction over the subject matter of this action
18 pursuant to 28 U.S.C. §§ 1331, 1345 and 1367, 42 U.S.C. § 9613(b), and 33
19 U.S.C. § 2717(b). The Court has personal jurisdiction over the Parties. Solely for
20 the purposes of this Decree and the underlying Complaint, the Parties waive all
21 objections and defenses that they may have to jurisdiction of the Court or to
22 venue in this District. The Parties may not challenge the terms of this Decree or
23 this Court's jurisdiction to enter and enforce this Decree.

24 IV. PARTIES BOUND

25 2. This Decree is binding upon the United States, the State, the
26 Suquamish Tribe, the Muckleshoot Indian Tribe, and the Defendant and its heirs,
27 successors and assigns. Any change in ownership or corporate or other legal
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1 status, including but not limited to any transfer of assets or real or personal
2 property, will in no way alter the status or responsibilities of the Defendant under
3 this Decree.

4 3. Defendant shall provide a copy of this Consent Decree to each
5 contractor hired by Defendant to perform any of the work required by this
6 Consent Decree, and to each person representing Defendant with respect to any
7 such work, and shall condition all future contracts entered into by Defendant
8 hereunder upon performance of the work in conformity with the terms of this
9 Consent Decree. Defendant or its contractors shall provide written notice of the
10 Consent Decree to all subcontractors hired by Defendant's contractors to perform
11 any portion of the work. Defendant shall nonetheless be responsible for ensuring
12 that all work performed by its contractors and subcontractors is performed in
13 accordance with this Consent Decree.

14 V. DEFINITIONS

15 4. Unless otherwise expressly provided, terms used in this Decree that
16 are defined in CERCLA or in regulations promulgated under CERCLA have the
17 meanings assigned to them in CERCLA or in such regulations. Whenever the
18 terms listed below are used in this Decree or in any attached appendix, the
19 following definitions will apply:

20 a. "CERCLA" means the Comprehensive Environmental
21 Response, Compensation, and Liability Act of 1980, as amended, 42 U S C. §
22 9601, *et seq.*

23 b. "Consent Decree" or "Decree" means this Consent Decree and
24 all attached appendices. In the event of a conflict between this Consent Decree
25 and any Appendix, the Consent Decree will control.

26 c. "Covered Natural Resource Damages" means damages,
27 including costs of damage assessment, recoverable under Section 107 of
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1 CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW; Section 311 of the Clean
2 Water Act (“CWA”), 33 U.S.C. § 1321; and Section 1002 of the Oil Pollution Act
3 of 1990 (“OPA”), 33 U.S.C. § 2702(b), for injury to, destruction of, or loss of
4 natural resources resulting from releases of hazardous substances or discharges of
5 oil to the Lower Duwamish Waterway and/or Elliott Bay, where such release or
6 discharge occurred on or before the effective date of this Consent Decree, at the
7 following locations: Boeing Developmental Center (tax parcels 0003400018,
8 0003400026, 0003400028, 0003400048, 0423049016, 0423049047, 0423049183,
9 5624200990, 5624200992, 5624201032, 5624201036, 5624201038); Museum of
10 Flight (tax parcel 5624201034); Boeing Thompson Site (tax parcel 0007400033);
11 Isaacson Site (tax parcel 0001600014); South Park Site (tax parcels 7883608601,
12 7883608603); Boeing Plant 2 (tax parcels 0001600020, 0022000005,
13 0022000165, 0022000195, 2185000005, 2824049009, 2924049056, 2924049098,
14 2924049112, 3324049002); and Boeing Field (tax parcels 2924049066,
15 2924049106). Damages, injury to, destruction of, or loss of natural resources
16 resulting from releases of hazardous substances originating from Defendant’s
17 operations or activities outside of the tax parcels identified in this sub-paragraph
18 are not included in Covered Natural Resource Damages, even if those hazardous
19 substances reach the Lower Duwamish Waterway by flowing over, under, or
20 through one or more of the tax parcels identified in this sub-paragraph.

21 d. “Day” means a calendar day. In computing any period of time
22 under this Consent Decree, where the last day falls on a Saturday, Sunday, or
23 federal holiday, the period of time will run until the close of business of the next
24 working day. “Working day” means a day other than a Saturday, Sunday, or
25 Federal holiday.

26 e. “Defendant” means The Boeing Company.
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1 f. “DSOA Order” means the Resource Conservation and
2 Recovery Act Administrative Order on Consent agreed upon by the Defendant
3 and the U.S. Environmental Protection Agency, EPA Docket No. 1092-01-22-
4 3008(h).

5 g. “DSOA Work” means the corrective measures being
6 developed and implemented by Defendant to address the contamination in the
7 Plant 2 Duwamish Sediments Other Area (“DSOA”) pursuant to the DSOA
8 Order.

9 h. “Elliott Bay” means any portion of Elliott Bay (including the
10 shoreline, intertidal areas, tributaries, estuaries and bottom sediments) in the State
11 of Washington where hazardous substances originating from the parcels identified
12 in the definition of Covered Natural Resource Damages have come to be located.

13 i. “Lower Duwamish Waterway” means any portion of the
14 Duwamish Waterway (including the shoreline, intertidal areas, tributaries,
15 estuaries and bottom sediments) in the State of Washington where hazardous
16 substances originating from the parcels identified in the definition of Covered
17 Natural Resource Damages have come to be located.

18 j. “Lower Duwamish Waterway Stewardship Account” means
19 the account to be authorized for receipt of funds to be paid by the Defendant for
20 the Trustees’ permanent stewardship of the Project Site.

21 k. “MTCA” means the Model Toxics Control Act, Chapter
22 70.105D RCW.

23 l. “Natural Resources” means that definition as provided in 42
24 U.S.C. § 9601(16).

25 m. “Parties” means the United States, the State of Washington,
26 the Suquamish Tribe, the Muckleshoot Indian Tribe, and Defendant.

27 n. “Plaintiffs” means the United States, the State, the Suquamish
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1 Tribe, and the Muckleshoot Indian Tribe.

2 o. "Project" means all of the work and other commitments as
3 described in Appendix A.

4 p. "Project Site" means the areas outlined in Appendix A.

5 q. "Trustees" mean the United States Department of Commerce,
6 acting through NOAA; the United States Department of the Interior; the
7 Washington State Department of Ecology, on behalf of the State of Washington;
8 the Suquamish Tribe; and the Muckleshoot Indian Tribe.

9 VI. GENERAL PROVISIONS

10 5. The Complaint states claims upon which relief may be granted.

11 6. Nothing in this Consent Decree shall be construed as an admission of
12 liability by Defendant for any claims or allegations made in the Complaint or in
13 this Consent Decree.

14 7. This Consent Decree shall not be used as evidence of Defendant's
15 alleged liability in any action or proceeding other than an action or proceeding to
16 enforce the terms of this Consent Decree.

17 8. All activities undertaken by Defendant pursuant to this Consent
18 Decree shall be performed in accordance with the requirements of all applicable
19 laws and permits.

20 9. Defendant shall ensure that all work performed under this Consent
21 Decree shall be conducted as set forth in Appendix A attached hereto. If the
22 Trustees determine that Defendant is not complying with the requirements set
23 forth in the Decree and Appendix A, the Trustees shall provide prompt written
24 notice to Defendant specifying the basis for their determination of
25 noncompliance. Defendant may correct the noncompliance or invoke the dispute
26 resolution procedures set forth in Section XIV below. The Trustees may require
27 Defendant to take actions, to alter, suspend or cease ongoing activities, and to
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1 alter, postpone or refrain from taking proposed actions, as are necessary to ensure
2 compliance with the terms of this Consent Decree and any plans or proposals
3 adopted hereunder. If Defendant disputes any such requirements imposed by the
4 Trustees, the Defendant may invoke the dispute resolution procedures set forth in
5 Section XIV below.

6 10. This Consent Decree is not, and shall not be construed to be, a
7 permit issued pursuant to any law.

8 11. Where any portion of the activities undertaken pursuant to this
9 Consent Decree requires a federal, state or local permit or approval, Defendant
10 shall submit timely and complete applications and take all other actions necessary
11 to obtain such permits or approvals. The Defendant may seek relief under the
12 provisions of Section XVI (Force Majeure) of this Consent Decree for any delay
13 in the performance of the Project resulting from a failure to obtain, or a delay in
14 obtaining, any permit required for the Project.

15 12. The Plaintiffs do not, by their consent to the entry of this Consent
16 Decree, warrant or aver in any manner that Defendant's compliance with this
17 Consent Decree will result in compliance with CERCLA or any other law.
18 Compliance with this Consent Decree does not diminish or affect Defendant's
19 responsibility to comply with any applicable federal, state or local law or
20 regulation. The Parties agree that Defendant is responsible for achieving and
21 maintaining complete compliance with all applicable federal, state and local laws,
22 regulations and permits.

23 VII. PROJECT DEVELOPMENT

24 13. Defendant shall finance and construct the Project and shall perform
25 any additional activities in accordance with the terms set out in Appendix A.
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1 Initial Design and Construction Activities

2 14. Construction Schedule and Contingencies.

3 a. After completion of necessary design work as described in
4 Appendix A, and after EPA's and the Trustees' approval in writing of such final
5 design work, Defendant shall commence construction on the Project within ninety
6 (90) days (subject to the in-water construction work windows) of receiving
7 written authorization from the Trustees. The Trustees' written authorization will
8 be provided after: (1) the Trustees verify that the United States Environmental
9 Protection Agency (EPA) has reviewed and approved Defendant's work plan as
10 appropriate and consistent with Defendant's DSOA Work as defined in Paragraph
11 4(g) and Defendant's work as one of the Respondents to EPA's LDW SF Site
12 remedial investigation/feasibility study (RI/FS) Order, Docket No. CERCLA-10-
13 2001-0055, and any response action decisions for the LDW SF Site that EPA may
14 have made, or may or expects to make, that may affect the Project; and (2) other
15 reviews and determinations by the Trustees, including but not limited to those
16 identified in the Scope of Work in Appendix A.

17 b. If Defendant has not completed construction of the Project
18 prior to December 31, 2014, then Defendant shall either (i) pay to the Trustees the
19 sum of \$250,000 as compensation for the additional delay in restoration of natural
20 resources, or (ii) perform additional restoration work outside of the Project Site
21 agreed upon in writing by Defendant and the Trustees. For each subsequent year
22 in which Defendant has not completed construction of the Project prior to
23 December 31, Defendant shall either (i) pay to the Trustees the sum of \$250,000
24 as compensation for the additional delay in restoration of natural resources, or (ii)
25 perform additional restoration work outside of the Project Site agreed upon in
26 writing by Defendant and the Trustees. Defendant's obligations under this
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1 subparagraph are in addition to any other obligations or applicable penalties under
2 this Decree and are not subject to the provisions of Section XVI (Force Majeure).

3 c. If Defendant has not received from the Trustees written
4 authorization to commence construction pursuant to Paragraph 14(a) by
5 December 31, 2017, then the following contingency measures become applicable:

6 (i) The Trustees may request in writing that Defendant
7 finance and construct a project or projects other than the Project described in
8 Appendix A, but which in the opinion of the Trustees is equivalent with respect to
9 ecological function, size, configuration and location as the Project. If Defendant
10 and Trustees are able to reach an agreement, the Parties may amend this Consent
11 Decree to substitute a new project or projects for the Project described in
12 Appendix A.

13 (ii) If the Trustees request a substitute project or projects
14 under the terms of Paragraph 14(c)(i), and the Trustees and Defendant are unable
15 to agree upon a substitute project or project, then the Trustees or Defendant may
16 send written notice that a final impasse among the parties has been reached. In
17 that event, this Consent Decree (including but not limited to the provisions of
18 Section XVIII (Plaintiffs' Covenant Not To Sue), Section XX (Defendant's
19 Covenant Not To Sue), and Section XXI (Effect Of Settlement; Contribution
20 Protection)) shall become null and void, and Defendant shall have no further
21 obligations to the Trustees under this Consent Decree; except, however, that in
22 this event, the provisions of Paragraph 14(c)(iii) shall then become applicable and
23 shall be the only provisions of this Consent Decree that remain in effect.

24 (iii) In the event that a final impasse is reached under the
25 provisions of Paragraph 14(c)(ii), the provisions in this Paragraph 14(c)(iii) shall
26 become applicable and shall survive the termination of the Consent Decree. The
27 Trustees shall have no obligation to refund any monies that have been paid or
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1 expended by Defendant pursuant to this Decree (including but not limited to
2 monies paid pursuant to Section VII (Project Development), Section X
3 (Reimbursement of Restoration Implementation Costs), Section XI
4 (Reimbursement of Past Costs), and Section XV (Stipulated Penalties)), nor shall
5 Defendant have any right to request or receive any refunds or reimbursements of
6 any such monies. In consideration for monies paid by Defendant pursuant to this
7 Consent Decree that are not refunded, Plaintiffs covenant not to seek, in any
8 future proceeding against Defendant for natural resource damages in the Lower
9 Duwamish Waterway or Elliott Bay, natural resource damage assessment costs or
10 other costs incurred on or before the last Billing Date that have been paid by
11 Defendant pursuant to Paragraph 30 (Reimbursement of Restoration
12 Implementation Costs).

13 (iv) The provisions of Paragraph 14(c) are not subject to the
14 provisions of Section XIV (Dispute Resolution) of the Consent Decree.

15 15. Within 60 days after completion of construction of the Project,
16 Defendant shall submit a written Notice of Completion to the Trustees. The
17 Trustees shall review the course and results of the development of the Project to
18 determine whether the Project has been completed in accordance with Appendix
19 A. Within 60 days after receiving the Notice of Completion, the Trustees shall
20 submit to Defendant either (a) a written notice identifying specific deficiencies
21 the Trustees determine must be satisfied for the Project to be completed in
22 accordance with Appendix A (Notice of Deficiencies); or (b) a written notice of
23 the Trustees' determination that the Project has been so completed (Notice of
24 Approval of Completion). The date of the Trustees' Notice of Approval of
25 Completion shall constitute the "Construction Completion Date." Following
26 receipt of a Notice of Deficiencies, Defendant shall correct the identified
27 deficiencies and complete the Project in accordance with Appendix A, and submit
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1 to the Trustees an amended Notice of Completion for review and response in
2 accordance with this Paragraph. Any delay in completing Project construction as
3 a result of the operation of this Paragraph shall not in and of itself constitute
4 grounds for relief from the requirement to pay stipulated penalties under Section
5 XV for compliance delays.

6 16. In order to ensure permanent preservation of the Project Site and its
7 associated ecological values, within sixty (60) days of the Construction
8 Completion Date, Defendant will record, enter into agreements, or otherwise take
9 appropriate actions with respect to the Project Site, including its property and
10 property owned by the Port of Seattle, to effectuate the provisions set forth in
11 Appendix B.

12 Development and Monitoring of Vegetation and Habitat

13 17. Defendant shall develop and monitor vegetation and habitat for a
14 period of ten years from the Construction Completion Date, as more fully
15 described in Appendix A. Upon completion of the ten-year period, Defendant
16 shall provide written Notice of Completion of Vegetation and Habitat
17 Development And Monitoring Obligations to Trustees in accordance with Section
18 XXIII (Notices and Submissions). Within 45 days after receiving the Notice of
19 Completion of Vegetation and Habitat Development And Monitoring Obligations,
20 the Trustees shall submit to Defendant either (a) a written notice identifying
21 specific deficiencies the Trustees determine must be satisfied for the vegetation
22 and habitat development and monitoring obligations to be completed in
23 accordance with Appendix A (Notice of Deficiencies); or (b) a written notice of
24 the Trustees' determination that the vegetation and habitat development and
25 monitoring obligations are completed (Approval of Completion of Vegetation and
26 Habitat Development And Monitoring Obligations). The date of the Trustees'
27 Approval of Completion of Vegetation and Habitat Development And Monitoring
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1 Obligations shall constitute the “Vegetation and Habitat Development and
2 Monitoring Completion Date.”

3 Continued Maintenance of Developed Vegetation and Habitat

4 18. Defendant shall be responsible for maintaining vegetation and other
5 habitat attributes, for controlling invasive vegetation and debris removal, and for
6 undertaking corrective actions for any perturbation that affects the ecological
7 integrity of the Project. The Parties’ intention is that the ecological functions
8 provided by the habitat projects be maintained in perpetuity. For purposes of this
9 Decree, Boeing’s responsibility for active maintenance and corrective action shall
10 extend thirty (30) years from the Construction Completion Date, or sooner if a
11 “force majeure” event makes further maintenance impossible. Perturbations
12 include events with a foreseeable probability of occurrence (such as, for example,
13 the beaching of an abandoned barge) but do not include “force majeure” events.
14 After the Construction Completion Date, Defendant shall not be responsible for
15 repairs or corrective actions to the Project required due to any “force majeure”
16 events.

17 19. Defendant shall provide for continued maintenance and corrective
18 actions in accordance with Paragraph 18, whether Defendant owns the Project
19 Site or transfers ownership of the Project Site. The Trustees recognize that the
20 Project Site may include property that is owned by other parties including, but not
21 limited to, the Port of Seattle. Defendant recognizes that it is solely responsible
22 for securing the cooperation of other property owners, including but not limited to
23 the Port of Seattle, in order to successfully complete and maintain the project in
24 accordance with Appendix A. Any failure by Defendant to successfully complete
25 or maintain the project in accordance with Appendix A resulting from disputes
26 with other property owners, including but not limited to the Port of Seattle, shall
27 not constitute a “force majeure” event.
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1 Transfer of Project Site for Permanent Stewardship

2 20. Within sixty (60) days of the Construction Completion Date,
3 Defendant shall ensure, both with respect to the portion of property it owns within
4 the Project Site and with respect to the portion of the Project Site owned by the
5 Port of Seattle, that the property will not be used in a manner inconsistent with
6 the requirements of this Consent Decree. In Defendant's sole discretion, it may
7 elect to transfer ownership of the portion of the Project Site it owns to an entity to
8 be identified by the Plaintiffs. If transfer of ownership of Defendant's property
9 occurs prior to the expiration of Defendant's obligations in Paragraph 18, such
10 transfer shall not affect or lessen Defendant's obligations under that Paragraph,
11 and the entity to which any property is transferred shall provide Defendant with
12 all access necessary to fulfill Defendant's responsibilities under Paragraph 18.

13 General Project Development Provisions

14 21. Defendant shall avoid taking any action that is inconsistent with this
15 Consent Decree and that would adversely affect the Project.

16 22. Defendant shall undertake all activities required to address cultural
17 resource issues associated with the Project, including, as applicable, consultation
18 with tribes and the Washington State Department of Archaeology and Historic
19 Preservation, conducting a background and project review by an archaeologist
20 who meets the Department of Interior's professional qualification standards at 36
21 C.F.R. Part 61, conducting cultural resource surveys or monitoring activities.

22 23. If Defendant determines that the Project will become cost-prohibitive
23 or if there is some other significant problem that will prevent the Project from
24 being constructed as designed, other than delay in obtaining EPA approval as set
25 forth in Paragraph 14(a), then the following contingency measures become
26 applicable:
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1 a. Defendant may propose a project or projects other than the
2 Project described in Appendix A, but which is equivalent with respect to
3 ecological function, size, configuration and location as the Project. Such
4 substitute project shall be subject to approval and acceptance by the Trustees. If
5 Defendant and Trustees are able to reach an agreement, the Parties may amend
6 this Consent Decree to substitute a new project or projects for the Project
7 described in Appendix A.

8 b. If Defendant requests a substitute project or projects under the
9 terms of Paragraph 23(a) and the Trustees and Defendant are unable to agree
10 upon a substitute project or project, then the Trustees or Defendant may send
11 written notice that a final impasse among the parties has been reached. In that
12 event, this Consent Decree (including but not limited to the provisions of Section
13 XVIII (Plaintiffs' Covenant Not To Sue), Section XX (Defendant's Covenant Not
14 To Sue), and Section XXI (Effect Of Settlement; Contribution Protection)) shall
15 become null and void, and Defendant shall have no further obligations to the
16 Trustees under this Consent Decree; except, however, that in this event, the
17 provisions of Paragraph 23(c) shall then become applicable and shall be the only
18 provisions of this Consent Decree that remain in effect.

19 c. In the event that a final impasse is reached under the
20 provisions of Paragraph 23(b), the provisions in this Paragraph 23(c) shall
21 become applicable and shall survive the termination of the Consent Decree. The
22 Trustees shall have no obligation to refund any monies that have been paid or
23 expended by Defendant pursuant to this Decree (including but not limited to
24 monies paid pursuant to Section VII (Project Development), Section X
25 (Reimbursement of Restoration Implementation Costs), Section XI
26 (Reimbursement of Past Costs), and Section XV (Stipulated Penalties)), nor shall
27 Defendant have any right to request or receive any refunds or reimbursements of
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1 any such monies. In consideration for monies paid by Defendant pursuant to this
2 Consent Decree that are not refunded, Plaintiffs covenant not to seek, in any
3 future proceeding against Defendant for natural resource damages in the Lower
4 Duwamish Waterway or Elliott Bay, natural resource damage assessment costs or
5 other costs incurred on or before the last Billing Date that have been paid by
6 Defendant pursuant to Paragraph 30 (Reimbursement of Restoration
7 Implementation Costs) or Paragraph 31 (Past Cost Reimbursement).

8 d. A determination by Defendant under the terms of Paragraph
9 23 that the Project has become cost-prohibitive or that there is some other
10 significant problem that will prevent the Project as described in Appendix A from
11 being constructed is subject to the provisions of Section XIV (Dispute
12 Resolution). The provisions of Paragraphs 23(b) and 23(c) regarding an impasse
13 between the Defendant and Trustees on a substitute project or projects and
14 regarding monies paid or expended by Defendant shall not be subject to the
15 provisions of Section XIV (Dispute Resolution).

16 24. The Trustees reserve the right to conduct additional work
17 themselves, at their own expense, on the Project Site. If such work is conducted
18 prior to completion of initial construction by Defendant, the Trustees will conduct
19 any such work in a manner that does not hinder Defendant's timely completion of
20 the Project. Prior to performing additional work pursuant to this Consent Decree,
21 the Trustees shall prepare and provide to Boeing a Health and Safety Plan. In no
22 event shall the Trustees perform any additional work that will interfere with
23 Defendant's obligations under this Consent Decree or the construction,
24 maintenance, operation, or monitoring of the Project or that otherwise affects the
25 performance criteria of this Consent Decree.

26 VIII. ACCESS TO INFORMATION AND PROJECT SITE

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1 25. To facilitate their oversight responsibilities, the Trustees shall have
2 full access to the Project Site for purposes of inspecting or observing Defendant's
3 progress in implementing the Project required under this Consent Decree.

4 26. Commencing upon the date of lodging of this Consent Decree,
5 Defendant agrees to provide the Trustees and their contractors access at all
6 reasonable times to the Project Site and to any property under the control of
7 Defendant to which access is required for the oversight or implementation of this
8 Consent Decree. This right of access does not include a right to enter
9 Defendant's buildings. Where the property to which access is sought is not
10 otherwise open to public access, the Trustees shall give notice prior to access.
11 Each Trustee shall have the authority to enter freely and move about such
12 property at all reasonable times for the purposes of overseeing the requirements
13 of this Consent Decree, including, but not limited to:

- 14 a. Monitoring and assessing progress on the planning,
15 development, maintenance and monitoring of the Projects;
- 16 b. Verifying any data or information submitted to the Trustees;
- 17 c. Inspecting and copying records, operation logs, contracts or
18 other documents maintained or generated by Defendant or its contractors
19 hereafter retained to perform work undertaken pursuant to this Consent Decree;
- 20 d. Conducting such tests, investigations or sample collections as
21 deemed necessary to monitor compliance with this Consent Decree, investigate or
22 assess contamination at or near the Project Site, or to assist in further identifying
23 and quantifying natural resource injuries requiring restoration actions and in
24 planning and carrying out further restoration actions.

25 27. Plaintiffs may direct that Defendant use, in a manner consistent with
26 Defendant's policy on the control of photographic devices, a camera, sound
27 recording device or other type equipment to record the work done under this
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1 Consent Decree or injury to natural resources and provide copies of any such
2 recordings to the Trustees. Defendant may retain a copy of any such photographs
3 or video recordings. Trustees may also use their own camera, sound recording
4 device, or other type equipment to record the work done under this Consent
5 Decree or injury to natural resources. However, unless Defendant consents,
6 during any visit to the Project Site the Trustees may not photograph or otherwise
7 record the interiors of Defendant's buildings or any of Defendant's equipment,
8 vehicles, machinery, or other devices that have or may have commercial or
9 defense-related sensitivity.

10 28. Defendant shall have the right to accompany any Trustee or its
11 representative on the property for purposes of security at the Project Site, and
12 Trustees and their representatives shall comply with applicable health and safety
13 precautions and security-related laws. If any Trustee or its representative seeks to
14 perform duties at the Project Site in a manner that is not in compliance with any
15 written Project Site health and safety requirement, plan, or rule, or any applicable
16 federal or state law or promulgated regulation, Defendant may verbally notify
17 such Trustee or representative of the non-compliance and may further notify such
18 Trustee of such non-compliance in writing. Defendant shall not be obligated,
19 pursuant to Section XVII of this Decree, to indemnify anyone for any claims,
20 damages, or injuries caused by a Trustee's failure to comply with the applicable
21 health and/or safety requirement, rule, plan, law or regulation, where verbal or
22 written notice of such noncompliance was provided by Defendant prior to the
23 performance of actions which caused the claims, damages, or injuries. Defendant
24 further shall have the right (a) to copies of results of all tests or investigations
25 conducted by the Trustees pursuant to this Decree; and (b) to split samples taken
26 by the Trustees pursuant to this Decree. No claim of confidentiality shall be
27 made with respect to any data, including, but not limited to, all sampling,
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1 analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or
2 any other documents or information evidencing conditions at or around the
3 Project Site.

4 IX. SELECTION OF CONTRACTORS

5 29. The selection of any contractor hereafter retained by Defendant to
6 perform any of the work required under this Consent Decree shall be subject to
7 Trustee approval. Defendant shall notify the Trustees in writing of the name, title
8 and qualifications of any contractor Defendant proposes to retain, and of any
9 proposed changes in the selection of a contractor. The Trustees will notify
10 Defendant in writing of the approval or disapproval of a proposed contractor.
11 The Trustees' assent to the proposed selection or change of a contractor may be
12 presumed unless the Trustees notify Defendant in writing of their objection to the
13 proposed selection or change within 30 days of Defendant's written selection
14 notice.

15 X. REIMBURSEMENT OF RESTORATION IMPLEMENTATION COSTS

16 30. Defendant agrees to reimburse the Trustees' reasonable costs
17 incurred in implementing and overseeing the Project described in Appendix A to
18 this Consent Decree. The period during which the Trustees will incur
19 implementation costs begins on June 1, 2009 and ends on the ending date of
20 Defendant's responsibility for active maintenance and corrective action, as set
21 forth in Paragraph 18. Defendant shall reimburse these costs as follows:

22 a. Each year, beginning in 2010, the Trustees shall provide
23 Defendant with an invoice detailing their reasonable costs of implementing and
24 overseeing the Project between June 1 of the prior calendar year and May 31 of
25 the current calendar year. Within sixty (60) days of receipt of the Trustees'
26 invoice, Defendant shall reimburse the Trustees for those costs. If Defendant
27 believes that any of the Trustees' invoiced costs are not reasonable, Defendant
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1 may invoke the Dispute Resolution provisions of Section XIV as to the disputed
2 costs only; any costs for which Defendant does not invoke Dispute Resolution
3 shall be paid within sixty (60) days of receipt of the Trustees’ invoice.

4 b. At any time after receipt by Defendant of authorization by the
5 Trustees to begin construction of the project pursuant to Paragraph 14(a), the
6 Trustees and Defendant will seek to negotiate a lump-sum payment by Defendant
7 to the Trustees for the remainder of the Trustees’ anticipated implementation
8 costs. If Defendant and the Trustees reach agreement on a lump-sum payment,
9 then Defendant’s obligations to make annual payments of the Trustees reasonable
10 implementation and oversight costs pursuant to Paragraph 30(a) shall be fully and
11 finally satisfied upon receipt by the Trustees of Defendant’s lump-sum payment.
12 Such a lump-sum payment shall be made as follows: The Trustees shall petition
13 the Court to establish the Lower Duwamish Waterway Implementation Account
14 for use as the Trustees shall determine, in accordance with the terms of this
15 Consent Decree and other applicable law, to fund the Trustees’ implementation
16 and oversight of the Project. Payment shall be deposited with the Registry of the
17 Court by EFT if the Registry of the Court accepts payment in that form, and if
18 not, by certified check, bearing the notation “The Boeing Company –
19 Implementation Account” and the civil action number assigned to this Consent
20 Decree, made payable and addressed as follows:

21 Payee: Clerk of the Court
22 Address: Clerk, U.S. District Court U.S. Courthouse
700 Stewart Street
Seattle, WA 98101
23 Memo: For Deposit into the Lower Duwamish Waterway
24 Implementation Account: [INSERT THIS CASE DOCKET NUMBER]

XI. PAST COST REIMBURSEMENT

31. Within forty-five (45) days of entry of this Decree, Defendant will pay to the Trustees sums totaling one million nine hundred forty-three thousand one hundred eighty-four dollars and eighty-six cents (\$1,943,184.86) in damage assessment costs through May 31, 2009. These sums shall be paid in the following amounts and particulars:

Trustee: National Oceanic and Atmospheric Administration
Amount: One million six hundred eighty-three thousand two hundred thirty-nine dollars and ten cents (\$1,683,239.10)

Trustee: U.S. Department of the Interior
Amount: One hundred eighty-four thousand, five hundred seventeen dollars and fifty-nine cents (\$184,517.59)

Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures. Payment shall be made in accordance with instructions provided to Defendant by the Financial Litigation Unit of the U.S. Attorney’s Office of the Western District of Washington. Any payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be credited on the next business day. Defendant shall provide at least five days notice to the Financial Litigation Unit before making the transfer.

Payments to the other Trustees shall be made by certified checks, bearing the notation “The Boeing Company – Lower Duwamish Waterway Assessment Costs” in the amounts indicated and made payable and addressed as follows:

Trustee: State of Washington
Amount: Fifty-four thousand two hundred ninety-one dollars and seventeen cents (\$54,291.17)
Payee: State of Washington/Department of Ecology
Address: State of Washington
Department of Ecology
Attention: Fiscal Office
P.O. Box 47611
Lacey, WA 98504-7611

1 Trustee: Suquamish Tribe
 2 Amount: Twenty-one thousand one hundred thirty-seven dollars
 (\$21,137)
 3 Payee: Suquamish Tribe
 4 Address: Melody Allen
 Suquamish Tribe
 Legal Department
 P.O. Box 498
 5 Suquamish, WA 98392-0498

6 32. At the time of each payment Defendant will send notice that payment
 7 has been made to the Trustees and DOJ in accordance with Section XXIII
 8 (Notices and Submissions). Such notice will reference Lower Duwamish
 9 Waterway NRDA, DOJ case number 90-11-3-7227/1, and the civil action number.

10
 11 XII. FUND FOR PERMANENT STEWARDSHIP OF PROJECT SITE

12 33. Within forty-five (45) days of receipt from the Trustees of written
 13 authorization to commence construction of the Project pursuant to Paragraph
 14 14(a), Defendant shall make a payment in the total amount of three hundred sixty
 15 thousand dollars (\$360,000) to fund permanent stewardship of the Project. Prior
 16 to authorizing commencement of construction, the Trustees shall petition the
 17 Court to establish the Lower Duwamish Waterway Stewardship Account for use
 18 as the Trustees shall determine, in accordance with the terms of this Consent
 19 Decree and other applicable law, to permanently maintain and manage the project
 20 sites, including protection of their ecological values. Payment shall be deposited
 21 with the Registry of the Court by EFT if the Registry of the Court accepts
 22 payment in that form, and if not, by certified check, bearing the notation “The
 23 Boeing Company – Stewardship Account” and the civil action number assigned to
 24 this Consent Decree, made payable and addressed as follows:

25 Payee: Clerk of the Court
 26 Address: Clerk, U.S. District Court
 U.S. Courthouse
 700 Stewart Street
 27 Seattle, WA 98101
 28

1 Memo: For Deposit into the Lower Duwamish Waterway Stewardship
2 Account [INSERT THIS CASE DOCKET NUMBER]
3 Defendant shall send photocopies of each check and any transmittal letter to:
4 Chief; Environmental Enforcement Section, Department of Justice, P.O. Box
5 7611, Ben Franklin Station, Washington, D.C. 20044; and to Laurie Lee, NOAA
6 Office of General Counsel, 501 W. Ocean Blvd., Suite 4470, Long Beach, CA,
7 90802. Any funds paid pursuant to this Paragraph that are not utilized by the
8 Trustees to fund permanent stewardship of the project sites may be applied by the
9 Trustees toward one or more additional habitat restoration projects in the Lower
10 Duwamish Waterway.

11 XIII. FAILURE TO MAKE TIMELY PAYMENTS

12 34. If Defendant fails to make any payment under Paragraphs 30, 31, or
13 33 by the required due date, interest shall be assessed at the rate specified for
14 interest on investments of the EPA Hazardous Substance Superfund established by
15 26 U.S.C. § 9507, compounded annually on October 1 of each year in accordance
16 with 42 U.S.C. § 9607(a). The applicable rate of interest is the rate in effect at the
17 time the interest accrues. The rate of interest is subject to change on October 1 of
18 each year. Interest on late payments shall accrue beginning on the date of entry of
19 the Consent Decree through the date on which the payment is made.

20 XIV. DISPUTE RESOLUTION

21 35. Unless otherwise expressly provided for in this Consent Decree, the
22 dispute resolution procedures of this Section shall be the exclusive mechanism to
23 resolve disputes arising under or with respect to this Consent Decree.

24 36. Any dispute which arises under or with respect to this Consent
25 Decree shall in the first instance be the subject of informal negotiations between
26 the Trustees and Defendant. The period for informal negotiations shall not exceed
27 twenty-one (21) days from the time the dispute arises, unless the parties to the
28 dispute agree otherwise in writing. The dispute shall be considered to have arisen

1 when the Trustees send Defendant a written notice specifying the nature of the
2 dispute and requested relief (“Notice of Dispute”) or Defendant sends the Trustees
3 a written Notice of Dispute.

4 37. a. If the Parties cannot resolve a dispute by informal negotiations
5 under the preceding Paragraph, then the position advanced by the Trustees shall
6 be considered binding unless, within twenty-one (21) days after the conclusion of
7 the informal negotiation period, Defendant invokes the formal dispute resolution
8 procedures of this Section by serving on the Trustees a written Statement of
9 Position on the matter in dispute, including, but not necessarily limited to, any
10 factual data, analysis or opinion supporting that position and any supporting
11 documentation relied upon by Defendant.

12 b. Within twenty-one (21) days after receipt of Defendant’s
13 Statement of Position, the Trustees shall serve on Defendant their written
14 Statement of Position, including, but not necessarily limited to, any factual data,
15 analysis or opinion supporting that position and all supporting documentation
16 relied upon by the Trustees.

17 c. An administrative record of the dispute shall be maintained by
18 the Trustees and shall contain all Statements of Position, including supporting
19 documentation, submitted pursuant to this Section.

20 d. The Defendant and the Trustees each shall identify a Formal
21 Dispute Resolution Representative, who shall meet to discuss the matter in dispute
22 at the earliest available opportunity and who will meet and work in good faith to
23 resolve the matter in dispute. If the Parties fail to resolve the dispute within
24 twenty-one (21) days after the initial meeting of the Formal Dispute Resolution
25 Representatives, then the position advanced by the Trustees in their Statement of
26 Position shall be considered binding upon Defendant, subject to any agreements
27 the Formal Dispute Resolution Representatives may have reached on one or more
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1 issues. In such event, the Trustees shall within five (5) days of the conclusion of
2 the formal dispute resolution process notify Defendant in writing that the formal
3 dispute resolution process has concluded. Defendant may seek judicial review of
4 the Trustees' Statement of Position (as modified by any agreements the Formal
5 Dispute Resolution Representatives may have reached) pursuant to the following
6 Subparagraph.

7 e. Any matter in dispute shall be reviewable by this Court,
8 provided that a motion for judicial review of the decision is filed by Defendant
9 with the Court and served on all Parties within twenty-one (21) days of receipt of
10 the Trustees' letter notifying Defendant of the conclusion of the formal dispute
11 resolution process. The motion shall include a description of the matter in dispute
12 (including both Statements of Position), the efforts of the parties to resolve the
13 dispute, the relief requested, and the schedule, if any, within which the dispute
14 must be resolved to ensure orderly implementation of this Consent Decree. The
15 Parties shall jointly move the Court to establish a schedule under which the
16 Plaintiffs file a response to Defendant's motion within twenty-one (21) days of
17 receipt of the motion, and Defendant file a reply brief within five (5) business
18 days of receipt of the response. If the Court does not grant the motion for such a
19 schedule, then the Parties shall file the response and reply in accordance with the
20 schedule set forth in the Local Rules for the Western District of Washington.

21 f. The Court may rule based on the administrative record, with or
22 without oral argument, and shall review Trustees' Statement of Position or its
23 resolution of the dispute under the standards of Administrative Procedures Act.

24 g. The foregoing notwithstanding, the Parties acknowledge that
25 disputes may arise that require resolution on an expedited basis. In such cases, the
26 Parties shall agree on an expedited schedule or, absent prompt agreement, either
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1 Defendant or the Trustees may petition the Court for the imposition of an
2 expedited schedule.

3 38. The invocation of formal dispute resolution procedures under this
4 Section shall not extend, postpone, or affect in any way any obligation of the
5 Defendant under this Consent Decree, not directly in dispute, unless the Trustees
6 or the Court agree otherwise. Stipulated penalties with respect to the disputed
7 matter shall continue to accrue, but payment otherwise required under Section XV
8 shall be stayed pending resolution of the dispute. Notwithstanding the stay of
9 payment, stipulated penalties shall continue to accrue from the first day of
10 noncompliance with any applicable provision of this Consent Decree. In the event
11 that the Defendant does not prevail on the disputed issue, stipulated penalties shall
12 be assessed and paid as provided in Section XV (Stipulated Penalties).

13 XV. STIPULATED PENALTIES

14 39. The Parties stipulate that the time period for implementing the
15 Project is a significant factor in the settlement reached in this Decree and that
16 delay in carrying out the activities required in this Decree may diminish the
17 compensatory value attributable to those activities. Consequently, in the event
18 that Defendant fails to meet a requirement in this Decree (subject to any
19 modifications agreed to under Section XXVII) and any delay is not excused
20 through operation of the provisions of Section XVI (Force Majeure), Defendant
21 shall, as a stipulated penalty, increase the financial contributions it makes under
22 this Consent Decree to fund habitat restoration actions, over and above any
23 payments required elsewhere under this Consent Decree, as follows:

24 a. For each week Defendant fails to comply with any requirement
25 in the Decree, Defendant shall pay a stipulated penalty in the amount of \$1,000.
26 Where the delay extends beyond the second week, the stipulated penalty shall
27 apply to each additional day of delay for each such missed requirement. For
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1 purposes of this Subparagraph, a week shall equal a continuous period of seven
2 days. Nothing in this Decree prevents the simultaneous accrual of separate
3 penalties for separate violations of this Decree.

4 b. All penalties shall begin to accrue on the day after the
5 complete performance is due or the day a violation occurs, and shall continue to
6 accrue through the final day of the correction of the noncompliance or completion
7 of the activity. Following the Trustees' determination that Defendant has failed
8 to comply with a requirement of this Consent Decree, the Trustees may give
9 Defendant written notification of the same and describe the noncompliance. The
10 Trustees may send the Defendant a written demand for the payment of the
11 penalties. However, penalties shall accrue as provided in the preceding Paragraph
12 regardless of whether the Trustees have notified Defendant of a violation.

13 c. All payments to the Trustees under this Paragraph will be
14 deposited with the Registry of the Court by EFT if the Registry of the Court
15 accepts payment in that form, and if not, by certified check. This payment will be
16 deposited in the Lower Duwamish Waterway Account. At the time of each
17 payment, Defendant will send notice that payment has been made to the Trustees
18 and DOJ in accordance with Section XXIII (Notices and Submissions). This
19 notice will reference Lower Duwamish Waterway NRDA, DOJ Case Number 90-
20 11-3-07227/1, and the civil action number.

21 d. All penalties accruing under this Section shall be due and
22 payable within 30 days of the Defendant's receipt from the Trustees of a demand
23 for payment of the penalties, unless Defendant invokes the Dispute Resolution
24 procedures under Section XIV (Dispute Resolution).

25 e. Defendant may dispute the Trustees' right to the penalties
26 identified under Subparagraph a above by invoking the procedures of Section XIV
27 (Dispute Resolution).

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1 The payment of penalties shall not alter in any way Defendant's obligation
2 to complete the performance of the Work required under this Consent Decree.

3 40. Penalties shall continue to accrue as provided in Paragraph 39(b)
4 during any dispute resolution period, but need not be paid until the following:

5 a. If the dispute is resolved by agreement or by a decision of the
6 Trustees that is not appealed to this Court, accrued penalties determined to be
7 owing shall be paid to the Trustees within 15 days of the agreement or the receipt
8 of the Trustees' decision or order;

9 b. If the dispute is appealed to this Court and the Trustees prevail
10 in whole or in part, Defendant shall pay all accrued penalties determined by the
11 Court to be owed to the Trustees within 60 days of receipt of the Court's decision
12 or order, except as provided in Subparagraph c below;

13 c. If the District Court's decision is appealed by any Party,
14 Defendant shall pay all accrued penalties determined by the District Court to be
15 owing to the Trustees into an interest-bearing escrow account within 60 days of
16 receipt of the Court's decision or order. Penalties shall be paid into this account
17 as they continue to accrue, at least every 60 days. Within 15 days of receipt of the
18 final appellate court decision, the escrow agent shall pay the balance of the
19 account to the Trustees or to Defendant to the extent that they prevail.

20 41. If Defendant fails to pay stipulated penalties when due, the Trustees
21 may institute proceedings to collect the penalties, as well as interest. Defendant
22 shall pay Interest on the unpaid balance, which shall begin to accrue on the date of
23 demand made pursuant to Paragraph 39(d).

24 42. If the Trustees bring a motion or a separate action in court to enforce
25 this Decree and prevail, the Trustees shall be entitled to recover from the
26 Defendant their reasonable costs of such motion or action, including but not
27 limited to costs of attorney time.
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1 47. a. If any event occurs or has occurred that may delay the
2 performance of any obligation under this Consent Decree, whether or not caused
3 by a force majeure event, Defendant shall notify the Trustees within 14 days of
4 when Defendant first knew that the event might cause a delay. Within 30 days
5 thereafter, Defendant shall provide a written explanation and description of the
6 reasons for the delay; the anticipated duration of the delay; all actions taken or to
7 be taken to prevent or minimize the delay; a schedule for implementation of any
8 measures to be taken to prevent or mitigate the delay or the effect of the delay;
9 and the rationale for attributing such delay to a force majeure event (if Defendant
10 intends to assert such a claim). Defendant shall include with any notice all
11 available documentation supporting its claim that the delay was attributable to a
12 force majeure event. Failure to comply with the above requirements will preclude
13 Defendant from asserting any claim of force majeure for that event.

14 b. If the Trustees agree that the delay or anticipated delay is
15 attributable to a force majeure event, the time for performance of the obligations
16 under this Consent Decree that are affected by the force majeure event will be
17 extended by the Trustees for such time as is necessary. An extension of the time
18 for performance of the obligations affected by the force majeure event shall not, of
19 itself, extend the time for performance of any other obligation. If the Trustees do
20 not agree that the delay or anticipated delay has been or will be caused by a force
21 majeure event, the Trustees will notify Defendant in writing of their decision.

22 c. If Defendant elects to invoke the dispute resolution procedures
23 set forth in Section XIV, above, regarding a claimed force majeure event it shall
24 do so no later than 30 days after receipt of the Trustees' notice of disagreement.
25 In any such proceeding Defendant shall have the burden of demonstrating by a
26 preponderance of the evidence that the delay or anticipated delay has been or will
27 likely be caused by a force majeure event, that the duration of the delay or the
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1 extension sought was or will be warranted under the circumstances, that
2 Defendant exercised best efforts to fulfill the obligation in question, that best
3 efforts were exercised to avoid and mitigate the effects of the delay, and that
4 Defendant complied with the requirements of this Paragraph. If Defendant carries
5 this burden, the delay at issue shall be deemed not to be a violation by Defendant
6 of the affected obligation of this Consent Decree.

7 XVII. INDEMNIFICATION; INSURANCE

8 48. a. Plaintiffs do not assume any liability by entering into this
9 Consent Decree. Defendant shall indemnify and hold harmless each of the
10 Plaintiffs and/or their agents, employees and representatives from any and all
11 damage claims or causes of action arising from negligent or other wrongful acts or
12 omissions of Defendant and/or its officers, employees, agents, contractors,
13 subcontractors, representatives and any persons acting on its behalf or under its
14 control in carrying out activities pursuant to this Consent Decree. Further,
15 Defendant agrees to pay the Plaintiffs all reasonable costs they incur, including
16 but not limited to attorneys fees and other expenses of litigation and settlement,
17 arising from or on account of claims made against the Plaintiffs based on
18 negligent or other wrongful acts or omissions of Defendant or its officers,
19 employees, agents, contractors, subcontractors, representatives and any persons
20 acting on its behalf or under its control, in carrying out activities pursuant to this
21 Consent Decree. None of the Plaintiffs shall be held out as a party to any contract
22 entered into by or on behalf of Defendant in carrying out activities pursuant to this
23 Consent Decree. Neither Defendant nor any contractor or representative of
24 Defendant shall be considered an agent of any Plaintiff, and Defendant shall
25 require any contractor hereafter retained by Defendant who performs work for
26 Defendant in carrying out activities pursuant to this Consent Decree to
27 affirmatively acknowledge that it is not acting as an agent of any Plaintiff.
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1 b. Plaintiffs shall give Defendant written notice of any claim for
2 which one or more Plaintiff plans to seek indemnification pursuant to Paragraph
3 48(a), and shall consult with Defendant (including, but not limited to, responding
4 to Defendant's reasonable requests for information regarding any proposed
5 settlement of that claim) prior to settling such claim.

6 49. Defendant waives all claims against Plaintiffs for damages or
7 reimbursement or for set-off of any payments made or to be made to Plaintiffs,
8 arising from or on account of any contract, agreement, or arrangement between
9 Defendant and any person for performance of activities pursuant to this Consent
10 Decree, including, but not limited to, claims on account of construction delays. In
11 addition, Defendant shall indemnify and hold harmless Plaintiffs with respect to
12 any and all claims for damages or reimbursement arising from or on account of
13 any contract, agreement, or arrangement between any Defendant and any person
14 for performance of activities pursuant to this Consent Decree, including, but not
15 limited to, claims on account of construction delays.

16 50. No later than 15 days before commencing any work on the Project
17 Site, Defendant shall cause to be maintained comprehensive general liability
18 insurance and automobile liability insurance with limits of \$10,000,000 (ten
19 million dollars), combined single limit. The Trustees shall be named additional
20 insureds on any such policies with respect to all liability arising out of the
21 activities performed by or on behalf of Defendant pursuant to this Consent
22 Decree. In addition, for the duration of this Consent Decree Defendant shall
23 satisfy, or shall ensure that their contractors or subcontractors satisfy, all
24 applicable laws and regulations regarding the provision of worker's compensation
25 insurance for all persons performing any work involved in implementing this
26 Consent Decree. No later than 15 days before commencing any work involved in
27 implementing this Consent Decree, Defendant shall provide to the Trustees
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1 certificates of such insurance. Upon request, the United States Department of
2 Justice may examine any such insurance policies at Defendant's corporate
3 headquarters in Chicago, Illinois, for the limited purpose of verifying that such
4 insurance policies provide the coverage required by this Consent Decree. The
5 Department of Justice will not copy the insurance policies during its review;
6 however, in the event of a dispute regarding the adequacy of such insurance
7 policies, Defendant will provide a confidential copy of the disputed policies to the
8 Court and to the Department of Justice. Following the resolution of any such
9 dispute, the copies provided will be destroyed or returned to Defendant.
10 Defendant shall resubmit such certificates each year on the anniversary of the
11 effective date of this Consent Decree. If Defendant demonstrates by evidence
12 satisfactory to the Trustees that any contractor or subcontractor maintains
13 insurance equivalent to that described above, or insurance covering the same risks
14 but in a lesser amount, then, with respect to that contractor or subcontractor,
15 Defendant need provide only that portion of the insurance described above that is
16 not maintained by the contractor or subcontractor.

17 XVIII. COVENANT NOT TO SUE BY PLAINTIFFS

18 51. Except as specifically provided in Section XIX (Reservations of
19 Rights) below, Plaintiffs covenant not to sue or to take administrative action
20 against Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a);
21 Chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. §
22 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §
23 2702(a), to recover Covered Natural Resource Damages. This covenant not to sue
24 will take effect upon Defendant's complete payment of costs pursuant to Section
25 X (Reimbursement of Restoration Oversight Costs), Section XI (Reimbursement
26 of Past Costs), and Section XII (Fund for Permanent Stewardship of Project Site)
27 and continue in effect conditioned upon the satisfactory performance by
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1 Defendant of its obligations under this Consent Decree. This covenant not to sue
2 extends only to Defendant and its heirs, successors and assigns, and does not
3 extend to any other person.

4 XIX. RESERVATIONS OF RIGHTS

5 52. Plaintiffs reserve, and this Consent Decree is without prejudice to, all
6 rights against Defendant with respect to all matters not expressly included within
7 the Covenant Not to Sue by Plaintiffs in Paragraph 51. Notwithstanding any other
8 provision of this Consent Decree, the Plaintiffs reserve all rights against
9 Defendant with respect to:

- 10 a. liability for costs of response incurred or to be incurred by
11 Plaintiffs under any federal or State statute;
- 12 b. liability for damages to natural resources (including
13 assessment costs) as defined 42 U.S.C. §§ 9601(6 & 16) that are not expressly
14 included within the Covenant Not to Sue by Plaintiffs in Paragraph 51;
- 15 c. liability for damages to natural resources (including
16 assessment costs) as defined 42 U.S.C. §§ 9601(6 & 16) within the Lower
17 Duwamish Waterway or Elliott Bay resulting from new releases of Waste Material
18 from Defendant's operations after the effective date of this Consent Decree, or
19 resulting from the Defendant's transportation, treatment, storage, or disposal, or
20 the arrangement for the transportation, treatment, storage, or disposal of Waste
21 Material at or in connection with the Site, after signature of this Consent Decree;
- 22 d. liability for injunctive relief or administrative order
23 enforcement under any federal or State statute;
- 24 e. liability for costs incurred or to be incurred by the Agency for
25 Toxic Substances and Disease Registry in or regarding the Lower Duwamish
26 Waterway or Elliott Bay;
- 27
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1 f. additional claims for Covered Natural Resource Damages if
2 conditions, factors or information in the Lower Duwamish Waterway or Elliott
3 Bay, not known to the Trustees as of the effective date, are discovered that,
4 together with any other relevant information, indicate that there is a threat to the
5 environment, or injury to, destruction of, or loss of natural resources of a type
6 unknown, or of a magnitude significantly greater than was known, at the time of
7 entry of this Consent Decree, which is attributable to the Defendant (for purposes
8 of this Subparagraph, information known to the Trustees shall consist of any
9 information in the files of, or otherwise in the possession of, any one of the
10 individual Trustees, or their contractors or consultants who worked on the
11 Trustees' natural resource damages assessment and liability allocation projects);

12 g. criminal liability to the United States or State; and

13 h. claims in this action or in a new action based on a failure of the
14 Defendant to satisfy the requirements of this Consent Decree.

15 XX. COVENANT NOT TO SUE BY DEFENDANT

16 53. Defendant covenants not to sue and agrees not to assert any claims or
17 causes of action against the United States, the State, the Suquamish Tribe, and the
18 Muckleshoot Indian Tribe, or their contractors or employees, relating to Covered
19 Natural Resource Damages. Defendant reserves, and this Consent Decree is
20 without prejudice to, all rights with respect to all matters not expressly included
21 within this Covenant Not to Sue, including all rights with respect to all matters
22 reserved in Section XIX.

23 XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

24 54. Nothing in this Consent Decree shall be construed to create any rights
25 in, or grant any cause of action to, any person not a Party to this Consent Decree.
26 The preceding sentence shall not be construed to waive or nullify any rights that
27 any person not a signatory to this decree may have under applicable law. Each of
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1 the Parties expressly reserves any and all rights (including, but not limited to, any
2 right to contribution), defenses, claims, demands, and causes of action they each
3 may have with respect to any matter, transaction, or occurrence relating in any
4 way to the Lower Duwamish Waterway against any person not a Party hereto.
5 Nothing in this Consent Decree diminishes the right of the United States, pursuant
6 to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue
7 any such persons to obtain additional relief (including response action, response
8 costs, and natural resource damages) and to enter into settlements that give rise to
9 contribution protection pursuant to Section 113(f)(2).

10 55. The Parties agree, and by entering this Consent Decree this Court
11 finds, that this settlement constitutes a judicially-approved settlement for purposes
12 of Section 113(f)(2), and that Defendant is entitled, as of the effective date of this
13 Consent Decree, to protection from contribution actions or claims as provided by
14 CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW 70.105D.040(4)(d),
15 or as may be otherwise provided by law, for Covered Natural Resource Damages;
16 provided, however, that if the Plaintiffs exercise their rights under the reservations
17 in Section XIX, other than in Paragraphs 52(g) (criminal liability) and 52(h)
18 (failure to satisfy a requirement of this Consent Decree), the contribution
19 protection afforded by this Consent Decree will no longer include those matters
20 that are within the scope of the exercised reservation.

21 56. Defendant agrees that it will notify the Trustees and the United States
22 in writing no later than 60 days before bringing a suit or claim for contribution for
23 Covered Natural Resource Damages. Defendant also will notify the Trustees of
24 any settlement of its claims (regardless of whether the claim is filed or unfiled) for
25 contribution for Covered Natural Resource Damages. Defendant also agrees that
26 it will notify the Trustees and the United States in writing within 10 days of
27 service of a complaint or claim upon Defendant relating to a suit or claim for
28

1 contribution for Covered Natural Resource Damages. In addition, Defendant will
2 notify the Trustees and the United States within 10 days of service or receipt of
3 any Motion for Summary Judgment and within 10 days of receipt of any order
4 from a court setting a case for trial for matters related to this Decree.

5 57. In any subsequent administrative or judicial proceeding initiated by
6 the Plaintiffs for injunctive relief, recovery of response costs, or other appropriate
7 relief other than Covered Natural Resource Damages, Defendant shall not assert,
8 nor may it maintain, any defense or claim based upon the principles of waiver, res
9 judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
10 based upon any contention that the claims raised by the Plaintiffs in the
11 subsequent proceeding were or should have been brought in the instant case;
12 provided, however, that nothing in this Paragraph affects the enforceability of the
13 covenants not to sue set forth in Paragraphs 51 and 53.

14 XXII. RETENTION OF RECORDS

15 58. Until 10 years after the Defendant's receipt of the Trustees'
16 notification pursuant to Paragraph 15, Defendant shall preserve and retain all non-
17 identical copies of records and documents (including records or documents in
18 electronic form) now in its possession or control or which come into its possession
19 or control that relate in any manner to its liability under CERCLA with respect to
20 the Lower Duwamish Waterway. Defendant must also retain, and instruct its
21 contractors and agents to preserve, for the same period of time specified above all
22 non-identical copies of the last draft or final version of any documents or records
23 (including documents or records in electronic form) now in its possession or
24 control or which come into its possession or control that relate in any manner to
25 the performance of the Project, provided, however, that Defendant (and its
26 contractors and agents) must retain, in addition, copies of all data generated during
27 the performance of the Work and not contained in the aforementioned documents
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1 required to be retained. Each of the above record retention requirements shall
2 apply regardless of any corporate retention policy to the contrary.

3 59. At the conclusion of this document retention period, Defendant shall
4 notify the Trustees at least 90 days prior to the destruction of any such records or
5 documents, and, upon written request by the Trustees, Defendant shall deliver any
6 such non-privileged records or documents to the Trustees. Defendant may assert
7 that certain documents, records and other information are privileged under the
8 attorney-client privilege or any other privilege recognized by federal law. If
9 Defendant asserts such a privilege, it shall provide the Plaintiffs with the
10 following: (1) the title of the document, record, or information; (2) the date of the
11 document, record, or information; (3) the name and title of the author of the
12 document, record, or information; (4) the name and title of each addressee and
13 recipient; (5) a description of the subject of the document, record, or information;
14 and (6) the privilege asserted by Defendant. However, no documents, reports or
15 other information created or generated pursuant to the requirements of the
16 Consent Decree shall be withheld on the grounds that they are privileged.

17 60. Defendant hereby certifies individually that, to the best of its
18 knowledge and belief, after a reasonable inquiry that fully complies with the
19 Federal Rules of Civil Procedure, it has not altered, mutilated, discarded,
20 destroyed or otherwise disposed of any records, documents or other information
21 (other than identical copies) relating to its potential liability regarding the Site
22 since notification of potential liability by any Trustee.

23 XXIII. NOTICES AND SUBMISSIONS

24 61. Whenever notice is required to be given or a document is required to
25 be sent by one Party to another under the terms of this Decree, it will be directed
26 to the individuals at the addresses specified below, unless those individuals or
27 their successors give notice of a change to the other Parties in writing. Written
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1 notice as specified constitutes complete satisfaction of any written notice
2 requirement of the Decree for Plaintiffs and Defendant

3 As to the United States and as to DOJ:

4 Chief, Environmental Enforcement Section
5 Environment and Natural Resources Division
6 U.S. Department of Justice
7 P.O. Box 7611
8 Washington, D.C. 20044-7611
9 (DJ #90-11-3-07227/1)

10 Michael J. Zevenbergen
11 U.S. Department of Justice
12 c/o NOAA/Damage Assessment
13 7600 Sand Point Way, NE
14 Seattle, WA 98115

15 As to NOAA:

16 Laurie Lee
17 NOAA Office of General Counsel
18 501 W. Ocean Blvd., Suite 4470
19 Long Beach, CA. 90802

20 As to the United States Department of the Interior:

21 Barry Stein
22 U.S. Department of the Interior
23 Office of the Solicitor
24 805 S.W. Broadway, Suite 600
25 Portland, OR 97205

26
27
28

1 Jeff Krausmann
2 U.S. Fish & Wildlife Service
3 510 Desmond Dr. SE, Suite 102
4 Lacey, WA 98503-1263

5 As to the State:

6 Craig Thompson
7 Toxics Cleanup Program
8 State of Washington
9 P.O. Box 47600
10 Olympia, WA 98504-7600

11 As to the Suquamish Tribe:

12 Melody Allen
13 Suquamish Tribe
14 Legal Department
15 P.O. Box 498
16 Suquamish, WA 98392-0498

17 As to the Muckleshoot Indian Tribe:

18 Mr. Rob Otsea
19 Office of the Tribal Attorney
20 Muckleshoot Indian Tribe
21 39015 172nd Avenue S.E.
22 Auburn, WA 98002

23 As to Boeing:

24 Steven E. Rusak
25 The Boeing Company
26 MC 7A-XP
27 P.O. Box 3707
28 Seattle, WA 98124-2207

Mark W. Schneider
Perkins Coie LLP
1201 Third Ave., Suite 4800
Seattle, WA 98101-3099

XXIV. EFFECTIVE DATE

62. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

1 XXV. RETENTION OF JURISDICTION

2 63. This Court retains jurisdiction over both the subject matter of this
3 Consent Decree and the Parties for the duration of the performance of the terms
4 and provisions of this Consent Decree for the purpose of enabling any of the
5 Parties to apply to the Court at any time for such further order, direction, and
6 relief as may be necessary or appropriate for the construction or modification of
7 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
8 resolve disputes in accordance with Section XIV (Dispute Resolution) hereof.

9 XXVI. INTEGRATION/APPENDICES

10 64. This Decree and its appendices constitute the final, complete, and
11 exclusive agreement and understanding with respect to the settlement embodied in
12 this Decree. The Parties acknowledge that there are no representations,
13 agreements, or understandings relating to the settlement other than those
14 expressly contained in this Decree. The terms “Consent Decree” and “Decree” as
15 used herein include the appendices to this Consent Decree, unless expressly
16 indicated to the contrary. The following appendices are attached to and
17 incorporated into this Consent Decree:

18 Appendix A Boeing Habitat Project Scope of Work

19 Appendix B Project Site deed restrictions

20 XXVII. MODIFICATION

21 65. No material modifications shall be made to any requirement under
22 this Consent Decree without written notification to and written approval of the
23 United States Department of Justice and the Trustees, Defendant and the Court.
24 Modifications to this Consent Decree exclusive of the appendices incorporated
25 within that do not materially alter the terms of this Consent Decree may be made
26 by written agreement between the United States Department of Justice, the
27 Trustees and Defendant. Modifications to any of the appendices to this Consent
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1 Decree that do not materially alter any of the terms of this Consent Decree may be
2 made by written agreement between the Trustees and Defendant.

3 XXVIII. ENFORCEMENT

4 66. The requirements of this Consent Decree, including but not limited to
5 deadlines, schedules and Project designs, are independently enforceable. Any
6 delay or failure of the Trustees to enforce any requirement will not preclude or
7 prejudice the subsequent enforcement of the same or another requirement.

8 XXIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

9 67. This Decree will be lodged with the Court for a period of not less
10 than 30 days for public notice and comment. The Plaintiffs each reserve the right
11 to withdraw or withhold their consent if the comments regarding the Decree
12 disclose facts or considerations that indicate this Decree is inappropriate,
13 improper, or inadequate. Defendant consents to the entry of this Decree without
14 further notice.

15 68. If for any reason this Court does not approve this Decree in the form
16 presented, this Decree may be voided at the sole discretion of any Party, and the
17 terms of the agreement may not be used as evidence in any litigation among the
18 Parties.

19 XXX. TERMINATION

20 69. When all actions required under Section VII have been taken and all
21 payments required under Sections X, XI, and XII have been made, the parties may
22 move to partially terminate this Consent Decree. Notwithstanding the previous
23 sentence, the following provisions of this Decree shall survive any motion for
24 termination: Paragraphs 20 and 21 of Section VII; Section VIII (“Access to
25 Information and Project Site”); Section XIV (“Dispute Resolution”); Section
26 XVIII (“Covenant Not to Sue by Plaintiffs”); Section XIX (“Reservations of
27 Rights”); Section XX (“Covenant Not To Sue by Defendant”), Section XXI
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1 (“Effect of Settlement; Contribution Protection”); and Section XXV (“Retention
2 of Jurisdiction”).

3 XXXI. SIGNATORIES/SERVICE

4 70. The Assistant Attorney General for the Environment and Natural
5 Resources Division of the United States Department of Justice and each
6 undersigned representative of the State, the Suquamish Tribe, the Muckleshoot
7 Indian Tribe and Defendant certifies that he or she is authorized to enter into the
8 terms and conditions of this Decree and to execute and bind legally the Party that
9 he or she represents to this document.

10 71. Defendant agrees not to oppose entry of this Decree by this Court or
11 to challenge any provision of this Decree unless any Plaintiff has notified
12 Defendant in writing that it no longer supports entry of the Decree.

13 72. Defendant will identify on the attached signature page the name and
14 address of an agent who is authorized to accept service of process by mail on
15 behalf of it with respect to all matters relating to this Decree. Defendant agrees to
16 accept service in that manner and to waive the formal service requirements set
17 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local
18 rules of this Court, including but not limited to service of a summons. Defendant
19 need not file an answer to the complaint in this action unless or until the Court
20 expressly declines to enter this Decree.

21 XXXII. FINAL JUDGMENT

22 73. Upon approval and entry of this Consent Decree by the Court, this
23 Consent Decree shall constitute a final judgment between and among the United
24 States, the State, the Suquamish Tribe, the Muckleshoot Indian Tribe, and
25 Defendant. The Court finds that there is no just reason for delay and therefore
26 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

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SO ORDERED THIS 14 DAY OF DECEMBER 2010.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

1 Signature Page for Consent Decree regarding the Lower Duwamish Waterway

2

3 **FOR THE UNITED STATES OF AMERICA:**

4

5

6 Date: _____

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

7

8

9

10

11 Date: _____

MICHAEL J. ZEVENBERGEN
Senior Counsel
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
c/o NOAA Damage Assessment
7600 Sand Point Way, NE
Seattle, Washington 98115

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1 Signature Page for Consent Decree regarding the Lower Duwamish Waterway

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3 **FOR THE BOEING COMPANY:**

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5

6 Date: _____

STEVEN SHESTAG
Director of Enterprise Remediation
The Boeing Company

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8

9

10 Date: _____

STEVEN E. RUSAK
Counsel for Environment, Health and Safety
Office of the General Counsel
The Boeing Company

11

12

13

14

15 Date: _____

MARK W. SCHNEIDER
Perkins Coie LLP
1201 Third Ave., Suite 4800
Seattle, WA 98101-3099

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Signature Page for Consent Decree regarding the Lower Duwamish Waterway

FOR THE STATE OF WASHINGTON:

Date: _____
Ted Sturdevant
Director
Department of Ecology

Date: _____
Nels Johnson
Assistant Attorney General
State of Washington

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Signature Page for Consent Decree regarding the Lower Duwamish Waterway

FOR THE SUQUAMISH TRIBE:

Date: _____

Leonard Forsman
Chairman
Suquamish Tribe
Post Office Box 498
Suquamish, Washington 98392

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Signature Page for Consent Decree regarding the Lower Duwamish Waterway

FOR THE MUCKLESHOOT INDIAN TRIBE:

Date: _____
Charlotte Williams
Chairperson
Muckleshoot Indian Tribe
39015 172nd Ave. S.E.
Auburn, WA 98092-9763