

**Tribal Agreement**  
**All Documents**

Agreement, 27 August 1988 .....	3
Agreement, - Table of Contents.....	4
Agreement .....	7
Technical Documents, Index .....	33
Tech. Doc #1, Lands to be Conveyed to the Tribe .....	34
Tech. Doc #2, Payments to Members of the Tribe .....	55
Tech. Doc #3, Permanent Trust Fund for Tribal Members .....	57
Tech. Doc #4, Fisheries .....	60
Tech. Doc #5, Job Training & Placement: Social & Health Service Improvements	101
Tech. Doc #6, Blair Navigation Project .....	11
1	
Tech. Doc #7, Future Governmental Authority, Responsibilities and Cooperation .....	11
6	
Implementing Agreement .....	12
3	
Exhibit A to Implementing Agreement, Indemnification .....	13
0	
Exhibit B to Implementing Agreement- Notice to Port of Party in Privity with Tribe .....	13
3	
Exhibit C to Implementing Agreement- Notice to Port by Tribe of Property Use (form) .....	13
5	
Addendum 1- Inner Hylebos Property .....	13
7	
Addendum 2- Taylor Way Property .....	14
0	
Addendum 3- East West Road Property .....	14
1	
Addendum 4- Upper Hylebos Property .....	14
3	
Addendum 5- Blair Waterway Property .....	14
6	

<b>Addendum 6- Blair Backup Property</b>	15
0	
<b>Supplimental Agreement-Settlement Agreement</b>	15
5	
<b>Exhibit A</b>	16
3	
<b>Supplimental Agreement Concerning Blair Waterway and Blair Navigation Project,</b>	16
5	
<b>Fisheries Mitigation Agreement</b>	17
4	
<b>Blair Waterway Property Future Development and Utility Relocation</b>	18
8	

Begin: Agreement (Basic Agreement)

## AGREEMENT

August 27, 1988

AGREEMENT  
August 27, 1988  
AGREEMENT: TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
PURPOSE AND SCOPE OF AGREEMENT; PARTIES	1
I. SETTLEMENT LANDS	2
A. Property Conveyed Other Than Current Riverbed	2
B. Current Riverbed	3
Map of Port Properties	5
Map of Fife Properties	6
II. PAYMENTS TO MEMBERS OF PUYALLUP TRIBE	7
III. PERMANENT TRUST FUND FOR TRIBAL MEMBERS	7
A. Trust Fund	7
B. Distribution of Trust Fund Income and Review of Trust Fund Management	8
C. Duration of Trust	8
IV. FISHERIES -	8
A. Fisheries Enhancement Program	8
B. Fisheries Protection	9
1. Mitigation and Enhancement Measures for Specific Port of Tacoma Development Projects	9
2. Tribe's Approval of Specified Port of Tacoma Projects	10
3. General Purpose Local Government Actions	11
C. Access to Fishery	13
1. Navigation	13
2. Milwaukee Peninsula/Puyallup River-Mouth Fishing Station	14

D.	Resolving Conflicts Between Development and Fisheries Protection	14
V.	JOB TRAINING & PLACEMENT PROGRAM; SOCIAL & HEALTH SERVICE IMPROVEMENTS	15
A.	Job Training and Placement	15
B.	Private Sector Jobs	15
C.	Social & Health Service Improvements	16
1.	Capital Projects	16
2.	Training Trust Fund	16
VI.	ECONOMIC DEVELOPMENT	16
A.	Economic Development and Land Acquisition Fund	16
B.	Small Business Fund for-Tribal Members	16
C.	Blair Navigation Project Participatory Payments	16
VII.	BLAIR NAVIGATION PROJECT	17
VIII.	FUTURE GOVERNMENTAL AUTHORITY, RESPONSIBILITY, AND COOPERATION	17
A.	Governmental Jurisdiction and Authority	18
1.	Tribal Jurisdiction and Governmental Authority - General	18
2.	Tribal Jurisdiction and Governmental Authority - Fisheries	19
3.	Tribal Jurisdiction and Governmental Authority - Environmental	20
4.	Jurisdiction and Governmental Authority - Other Governments	21
B.	Future Trust Lands	22
C.	Future Consultation Between the Tribal Government and Local Governments	22
D.	Governmental Services	23
E.	Agreement for Fife	24

F.	Law Enforcement	25
	1873 Survey Area: Illustration	27
IX.	RESOLUTION OF PUYALLUP TRIBAL LAND CLAIMS	28
X.	IMPLEMENTATION AND MODIFICATION	30
	A. Structure of Agreements	30
	B. Ratification By the Tribal Members	30
	C. Federal and State Participation	31
	D. Effective Date	31
	E. Modification	32
XI.	FEDERAL COURT JURISDICTION	32
	A. Liability	32
	B. Consent to Sue	33
XII.	LEGAL DISCLAIMER	33

## AGREEMENT

### PURPOSE AND SCOPE OF AGREEMENT; PARTIES

This Agreement establishes a framework for cooperation and a mutually beneficial future for the community. The Agreement: (1) adds to the Tribe's land base and provides resources for economic development; (2) provides each enrolled adult member of the Tribe with funds to meet personal needs, (3) provides resources for the Tribe to meet its members' health, education, and social needs; (4) provides for substantial restoration of the fishery resource, and allows for future development while lessening impacts on fisheries; (5) provides for significant employment and training opportunities for Puyallup Tribal members; (6) provides funds for land acquisition and development, and small business assistance; (7) provides for construction of Blair Project; (8) resolves conflicts over governmental jurisdiction; and (9) resolves all land claims by the Puyallup Indian Tribe, except as reserved in this Agreement.

This is an agreement between the Puyallup Indian Tribe and the United States, the State of Washington, and the signatory local governments and private parties. The Agreement will become effective when the steps shown in Section X. have been completed. At that time, this document and the documents specified in Section X. will become the Agreement of the parties.

Throughout the negotiations leading to this Agreement, both sides had the benefit of legal counsel and technical consultants. It is therefore agreed that all parties had the necessary resources to understand and make the difficult decisions required.

The following are the parties to this Agreement:

1. United States of America
2. Puyallup Indian Tribe
3. State of Washington
4. Port of Tacoma
5. Pierce County
6. City of Tacoma
7. City of Fife
8. City of Puyallup
9. Union Pacific Railroad Company
10. Burlington Northern Inc.
11. Commencement Bay Tideland Owners Committee, a non-profit corporation
12. Riverbed Owners Committee

All parties recognize that this Agreement cannot reverse or erase all of the injustices and problems that have occurred, and no one pretends that it does. Instead, the parties, although mindful of the past, have negotiated this Agreement to allow the Tribe and its members to provide themselves a secure future, to give greater certainty to Indians and non-Indians alike, and to encourage a cooperative relationship which will reduce the danger of continued injustice and continuing conflicts in the future.

I. SETTLEMENT LANDS

A. Property Conveyed Other Than Current Riverbed

The Tribe will receive an estimated 899 acres of land. Those properties and certain improvements have an estimated current value of \$37,460,000. Legal descriptions, improvements, restrictions and encumbrances are contained in Document 1. Two location drawings of the properties are included in this section.

Blair Waterway Property

The Tribe will receive 43.4 acres fronting on the Blair Waterway. The value of this property will increase substantially with completion of the Blair Project.

Blair Backup Property

The Tribe will receive 85.2 acres located between Taylor Way and Alexander Avenue, together with the buildings on the property. This property will retain its current designation as a Foreign Trade Zone. The value of this property will increase substantially with completion of the, Blair project.

Inner Hylebos Property

The Tribe will receive 72.9 acres of property on the Inner Hylebos, including a marina and a log storage site.

Upper Hylebos Property

The Tribe will receive 5.9 acres of property located at the head of the Hylebos Waterway.

Union Pacific Property (Fife)

The Tribe will receive 57 acres, subject to an easement for a roadway of approximately 4 acres. The Tribe will have an option to buy an additional 22 acres of land at its appraised fair market value.

II. PAYMENTS TO MEMBERS OF PUYALLUP TRIBE

The Tribal members will receive \$24 million that will be placed in an annuity fund or other investment program. Each person who is an enrolled member of the Tribe at the time of ratification of this Agreement by an affirmative vote of the Tribe's members will receive a one-time payment from the fund. Each enrolled member who has reached the age of 21 at the time that the Agreement becomes effective will receive the payment as soon as possible after that date. All other members will receive payment upon reaching the age of 21.

The \$24 million will be placed in an annuity fund or other financial investment program so that each member of the Tribe will receive a payment of approximately \$20,000. The Board of Trustees described in Section III below will be responsible for selecting a financial institution or institutions to administer the funds. The financial institution(s) shall be selected by the Board no later than 60 days after the Board is elected. It is the intention of the parties to this Agreement that the payments to each qualified member be made as soon as is practicable and financially prudent, as determined by the Board in consultation with the financial institution(s). No payments of any kind except the approximately \$20,000 per capita payable to all Tribal members shall be paid to the Board or its members out of this fund. A reasonable and customary fee may be paid out of income from the fund to the financial institution(s) for administration of the fund.

This estimate of \$20,000 per member is based on an assumed enrolled membership of 1,400 on the date of ratification. The exact amount which each member will receive may be slightly higher or lower depending on interest rates at the time the Agreement is implemented, and the ages of members at the time the Agreement is ratified. This program will last for 21 years from the date of ratification.

For details, see Document 2.

### III. PERMANENT TRUST FUND FOR TRIBAL MEMBERS

#### A. Trust Fund

The Tribe shall receive a trust fund totalling \$22 million for the benefit of the Tribe and its members. The full amount provided by this Agreement shall be held in trust by the United States. Only the income may be spent in any one year. Income earned from the fund shall be used solely for the following purposes:

1. Housing
2. Elderly Needs
3. Burial and Cemetery Maintenance
4. Education and Cultural Preservation
5. Supplemental Health Care
6. Day Care
7. Other Social Services

B. Distribution of Trust Fund Income and Review of Trust Fund Management:

Distribution of the income from the trust fund shall be directed by a nine-member Board of Trustees. The Board shall also oversee the trustees' administration of the fund. The Board will have three Trustees elected by the Tribe from its members; three Trustees elected by the Tribal Council; one Trustee designated by the Department of Interior; and two Trustees from the financial or social service community, selected by the Tribal and Federal Trustees.

C. Duration of Trust:

The Trust Fund shall be in existence for the duration of the existence of the Tribe, as recognized by the United States Government.

See Document 3 for details of Permanent Trust Fund.

IV. FISHERIES

Introduction: The goal of the fisheries portion of this Agreement is to enhance the fisheries resource, including protection of necessary habitat, while allowing construction and development to occur. The total value of the fisheries program is \$10,165,000, and an unspecified value for mitigation and enhancement for approved development projects. These funds will be used by the State and Tribal fisheries managers, through their cooperative management programs, to develop and implement a comprehensive production plan for the Basin. These funds are separate from any additional money that may be provided through the Congress, and do not include any monies previously agreed to by the State of Washington as a result of prior cooperative management projects.

A. Fisheries Enhancement Program

1. The Tribe will receive \$7,935,000 from the State of Washington for its use in improving the Puyallup River and Commencement Bay Basins fishery through:  
(a) site acquisition; (b) facilities construction

and improvement; (c) habitat improvement; (d) equipment purchase; (e) research; and (f) operation and maintenance of facilities. In addition, the State will make improvements to existing state facilities in the Puyallup River Basin to achieve increased production in the Basin, at a cost of \$800,000.

2. The Port of Tacoma will provide 31,300,000 to the Tribe for fisheries enhancement. These funds are in addition to \$675, 000 transferred from the Port of Tacoma to the Tribe under the Terminal 3 Agreement.

3. The parties recognize the Tribe's program for fisheries enhancement through the siting and development of Tribal net pen facilities. The Tribe and the State Departments of Fisheries and Wildlife will jointly identify those potential sites which are biologically and environmentally suitable for Tribal net pens. The parties with permitting authority will use their best efforts to facilitate the permitting of pen sites necessary to the implementation of the fisheries enhancement goals of this Agreement.

4. The Federal Government will spend \$100,000 for Commencement Bay navigation equipment. Additionally, \$30,000 will be provided by the Port for replacement of damaged fishing equipment.

B. Fisheries Protection

1. Mitigation and Enhancement Measures for Specific Port of Tacoma Development Projects

The approval given to the projects listed in the next subsection is conditioned on completion of the following mitigation and enhancement measures, as they relate to those individual projects:

- a. Reduced Fill Area and Milwaukee Waterway Shallowing
- b. Sitzum Waterway End Slope Revision
- c. Pier Construction Standards
- d. Slip 5 Shallowing
- e. Slip 1 Fill Slopes
- f. Blair Waterway Dredging Slopes
- g. Blair Waterway Bank Improvements
- h. Wapato Creek-Blair Waterway Outfall
- i. Wapato Creek Bridging
- j. Inner Hylebos Shallowing

b. Goals

The Tribe's treaty fishery must be managed to achieve increased salmon and steelhead production, including protection of necessary habitat, while providing for residential, commercial, industrial and other development, natural resource use, and protection of lives and property from flooding. These goals will be recognized by the local governments which are parties to this Agreement and after review they may adopt or modify as needed: (1) watershed action plans; (2) shoreline master programs; (3) land and resource use plans and regulations; and (4) environmental protection regulations. In addition, the local government parties, in consultation with the Tribe, will develop procedures for land use matters as a part of this Agreement.

c. Implementation

The appropriate local governments will take the following actions as needed to implement the goals:

- (1) Prepare action plans for drainage basins in Water Resource Inventory Area (WRIA) #10, including the Puyallup River and Commencement Bay drainage basins, in accordance with Puget Sound Water Quality Management Plan or other appropriate standards.
- (2) Develop and implement a County wetland management program, in consultation with the Tribe;
- (3) Provide regulations to preserve or provide streamside vegetation, for the purpose of maintaining water temperature, minimizing erosion sedimentation, providing food, and retaining protection from predation;
- (4) Modify flood control activities to offer increased protection to the fisheries habitat;
- (5) Expand or modify County Basin Flood Control Study to evaluate alternative measures for flood control regarding fisheries and flood control benefits and impacts; provide the Tribe with copies of County Hydraulic Permit applications on request; work with Tribe to carry out gravel removal in a manner which takes into account protection of fisheries habitat;

(6) Develop culvert and floodgate designs and installation, maintenance and inspection guidelines and programs for improved fish passage;

(7) Dechlorinate treated sewage discharges to fresh water if necessary to protect the fisheries resource;

In addition, the Tribe may review existing land use plans, regulations and policies and consider whether changes are needed to afford greater protection of the fisheries resource. Local governments will provide the Tribe with access to necessary information to accomplish such review. The local government shall consider any recommendation from the Tribe regarding fisheries habitat concerns.

C. Access to Fishery

1. Navigation

Conflicts between Tribal fishing and commercial shipping will be reduced through a Navigation Agreement which will:

- (a) Establish vessel traffic lanes for shipping traffic;
- (b) Identify anchoring sites for ships;
- (c) Set forth operation and communication procedures for implementation of the Agreement.

In addition, the Federal Government will spend \$100,000 to provide navigational lights and other equipment to reduce conflict between Tribal fishing and commercial shipping traffic in Commencement Bay.

Additionally, \$30,000 will be provided by the Port for establishment of a revolving fund to pay for the cost of equipment damaged by shipping traffic, as part of the Terminal 3 agreement.

2. Milwaukee Peninsula/Puyallup River-Mouth Fishing Station.

The Port will provide and maintain a 12-foot gravel road access and turn-around to this site, and permit emergency vehicle access through the Sea-Land site. Details of the above access assurances are provided in Document 4.

D. Resolving Conflicts Between Development and Fisheries Protection

1. This section establishes a process and standards to resolve conflicts between specific proposed development projects and protection of the fishery. A schedule and procedures will be provided to ensure communication between developers and the Tribe in order to encourage resolution of disputes, and to provide a voluntary arbitration system for unresolved disputes.
2. The standards for determining appropriate mitigation and/or enhancement are contained in Document 4. At a minimum, mitigation and enhancement will meet all applicable Federal and State requirements. Some developers may choose to reach an agreement with the Tribe which exceeds those requirements.
3. Projects undertaken by the parties to this system will be done in a manner that results in no net degradation to the fisheries resource and in addition provides, in appropriate cases, an enhancement element to improve the resource. The technical standards for determining appropriate mitigation and/or enhancement are contained in Document 4.
4. A developer who complies with the requirements for mitigation and enhancement as set forth in Document 4 will receive the concurrence of the Tribe and an agreement not to oppose the project in any federal, state or local permitting processes, or to seek a restraining order or injunction or otherwise seek to delay or stop construction of the project.

When the developer has completed the required mitigation and enhancement measures, the developer shall have met the conditions of this Agreement; provided, however, that the developer is fully responsible for ensuring that the measures are properly implemented, and that the intended operation and functioning of the mitigation and enhancement elements do take place, and that the mitigation and enhancement measures continue to function for a reasonable period of time comparable to what could have been expected for the undisturbed habitats.

V. JOB TRAINING & PLACEMENT PROGRAM; SOCIAL & HEALTH SERVICE IMPROVEMENTS

#### A. Job Training and Placement

265 Tribal members will have the opportunity to participate in a Job Training program, directed by the State Department of Employment Security in cooperation with the Tribe. This program includes the job training program developed as a result of the Terminal 3 agreement between the Port and the Tribe. The program will last for 4 years and cost \$937,000. It will provide: 1) pre-employment training, 2) basic skills remediation, 3) job search workshops and on-the-job training, 4) vocational training, 5) support services and follow-up, 6) job placement program, and 7) technical assistance for development of Tribal industries.

The program will be administered under the guidance of a steering committee composed of representatives from the Tribe, Employment Security Department, Bates Vocational/Technical Institute, Tacoma-Pierce County Private Industry Council, Commencement Bay Tideland Owners Committee and other employers providing jobs to Tribal members under Section V.B. of the Agreement. Specific implementation provisions are described in Document 5.

As a part of this program, the State will provide training for at least four Tribal members in culture activities.

#### B. Private Sector Jobs

A job placement program will be implemented by the Employment Security Department to provide for placement of Tribal members in jobs to match the members' skill and training. One hundred fifteen jobs for Tribal members, valued at \$2,500,000, will be provided by members of the Commencement Bay Tideland Owners Committee and other private businesses in the community, with placement through the Employment Security Department. In addition, the private sector will provide a coordinator for implementation of this commitment, at a cost of \$100,000

See Document 5 for details.

#### C. Social & Health Service Improvements

##### 1. Capital Projects

The State Department of Social and Health Services (DSHS) will provide to the Tribe funds for a 20-bed elder care facility, 20-bed youth substance abuse facility, a 42-child day care center, as well as computer equipment for the Tribal mental health

center, at a cost of \$1,255,000. DSHS shall provide these funds upon its acceptance of facilities plans prepared by the Tribe to meet these needs. A final accounting of the costs and expenditures of each project shall be provided to DSHS by the Tribe.

## 2. Training Trust Fund

Tribal members will receive funds for training in alcoholism counseling, day care, child welfare, mental health and social service management. This will be accomplished by the Department through a fund of \$127,000. Training will be provided through the Department's programs, or through local educational programs.

# VI. ECONOMIC DEVELOPMENT

## A. Economic Development and Land Acquisition Fund

The Tribe will receive \$9,500,000 to develop Tribal lands, and to make future purchases of land.

These funds can be used to acquire lands and to develop business and commercial ventures which will provide income to the Tribe for the operations and programs of the Tribal government, as well as additional jobs for Tribal members.

## B. Small Business Fund For Tribal Members

The Tribe will receive \$2 million to be used to support and assist in the development of business enterprises by Tribal members.

This fund could provide start-up funds and/or low interest loans to Tribal members to begin or expand their own businesses, wherever they may live.

## C. Blair Navigation Project Participatory Payments

Tribal incentives in the form of long-term annual participatory payments to the Tribe for economic development will be provided. Annual payments totalling \$2,500,000 over 20 years will be made to the Tribe for their participation in Blair waterway East 11th Street Bridge Navigation Opening Project. Details of these participatory payment schedules are in Document 6, Blair Navigation Project.

# VII. BLAIR NAVIGATION PROJECT

This project, which has been determined by the parties to be a common benefit to the United States, Tribe, non-Indian entities, and entire community, is included as an element of this Agreement. Federal legislation shall expressly recognize the Tribe's right to engage in foreign trade, consistent with federal law. It will widen and deepen the Blair Waterway navigation channel to meet both national and local domestic and foreign trade objectives. Incentives for the Tribe's participation in this important Water Resources Project are as follows:

- A. Unlocking of the Tribe's Blair Waterway and Backup lands provided in this Agreement. As with all other land along the Blair Waterway, these lands will be able to be developed to their optimum with the aid of these navigation improvements.
- B. Provision of \$2,500,000 in long-term annual participation payments to the Tribe. These payments will be available for short and long-term economic development purposes, such as their potential use on the Tribe's Blair Waterway properties.

A full project description, estimated costs, basis of funding within this Agreement, accomplishment plan, and Tribal incentive payments is found in Document 6.

## VIII. FUTURE GOVERNMENTAL AUTHORITY, RESPONSIBILITY, AND COOPERATION

In the area of governmental jurisdiction and the exercise of police powers, certainty and stability are important to the Tribe, local governments, the business sector, and private citizens, in order to achieve sustained and rational economic growth in the future, certainty for landowners, and an acceptable method of governing the area.

The restricted and trust lands of the Puyallup Indian Tribe now lie primarily within Pierce County, the City of Tacoma, and the City of Fife. The county is the second most populated county in the state and the area is highly urbanized and intensively developed. This section is intended to resolve governmental authority issues between the Tribe, United States of America, and State and local governments.

Because of the importance of these issues to both the Tribe and the other parties, these issues are extensively described below, and fully described in Document 7.

### A. Governmental Jurisdiction and Authority

The Puyallup Indian Reservation has been historically defined in various ways; one of those is as "the land within the high water line as meandered, and the upland boundaries as shown on the Plat Map of the 1873 Survey conducted by the United States General Land Office and filed in 1874, referred to as 'the 1873 Survey Area' in this Agreement." The parties agree that this Agreement does not resolve their differences as to the current boundaries of the Puyallup Indian Reservation. For purposes of this Agreement, the parties will use this Survey Area; a map is shown on page 27 for illustrative purposes.

The 1873 Survey Area shall not be used as basis for asserting Tribal jurisdiction or governmental authority over non-Indians, except as specifically provided by this Agreement. The Federal definitions of "Indian country", "Indian lands", and/or "Indian reservation" shall not be used by the Tribe or the United States as a basis for asserting Tribal control over non-trust lands either inside or outside the 1873 Survey Area, or the activities conducted on those lands, except as provided by the Agreement, or as otherwise agreed to between the Tribe and State, and/or local governments.

"Trust land" or "land in trust status" means land or any interest in land the title to which is held in trust by the United States for an individual Indian or Tribe; "restricted land" or "land in restricted status" means land the title to which is held by an individual Indian or a Tribe and which can be alienated or encumbered by the owner only with the approval of the Secretary of the Interior, because of limitations contained in the conveyance instrument pursuant to federal law or because of a federal law directly imposing limitations. Wherever the term "trust land" is referred to in this Agreement, it shall be deemed to include both trust and restricted lands.

1. Tribal Jurisdiction and Governmental Authority  
General

a. The jurisdiction of the Puyallup Indian Tribe shall extend to existing and future restricted and trust lands. The extent of the Tribe's jurisdiction shall be determined as provided in federal law.

b. Except as otherwise provided in this Agreement, the Tribe agrees not to assert or attempt to assert any type of jurisdiction and governmental authority, existing or potential,

including but not limited to the power to tax, as to (a) non-trust lands; (b) any activity on non-trust lands; (c) any non-Indian individual or business, on non-trust lands.

c. The settlement lands, including the Outer Hylebos parcel conveyed to the Tribe by the Terminal 3 Agreement with the Port, shall have on-reservation status; forest, recreation and cultural lands shall have off-reservation status. The reservation status of other lands shall be as provided in federal law.

d. The parties agree that all claims of ownership and governmental jurisdiction by the Tribe over the Initial Reservation or Intended Reservation on the south side of Commencement Bay will be terminated and extinguished by this Agreement.

e. The Tribe retains its authority under the Indian Child Welfare Act.

f. Notwithstanding any other provision of this Agreement, application of criminal law, family law and the Tribe's authority over its members and other Indians remains unchanged.

g. The Tribe retains and nothing in this Agreement shall affect the Tribe's status as an Indian Tribal government for purposes of the Indian Governmental Tax Status Act, 26 U.S.C. §7871, et seq, including for purposes of issuing tax exempt bonds.

2. Tribal Jurisdiction and Governmental Authority  
Fisheries

a. This Agreement does not limit the Tribe's authority to prevent negative impacts on the fishery through the federal courts or federal, State and local permitting procedures, subject to Section IV of the Agreement. However, the Tribe will not exercise jurisdiction and governmental authority over non-trust lands and non-Indians on those lands for that purpose.

b. Nothing in this Agreement shall have any effect on the Tribe's or its members' water rights as related to fisheries protection or to lands owned by the Tribe or its members, hunting, gathering, or fishing rights based on

aboriginal rights, treaty or executive order. These issues are not resolved by this Agreement, and this Agreement does not in any way affect the legal position of any party concerning these issues.

c. The fishery is an important cultural and economic resource to the Puyallup Indian Tribe. Therefore, the Tribe will adopt standards for trust lands which meet or exceed the highest standards of federal and state environmental protection. The Tribe will also confer with local governments to try to work out uniform standards for environmental protection.

3. Tribal Jurisdiction and Governmental Authority Environmental

For the purposes of this Agreement, the federal, state and local governments have exclusive jurisdiction for the administration and implementation of federal, state and local environmental laws on non-trust lands within the 1873 Survey Area. The federal and Tribal government have exclusive jurisdiction for the administration and implementation of federal and Tribal environmental laws on trust lands within the 1873 Survey Area. Any federal delegation under the federal environmental laws within the 1873 Survey Area for non-trust lands will be solely to the State of Washington or its political subdivisions, and any federal delegation under the federal environmental laws within the 1873 Survey Area for trust lands will be solely to the Tribe. In carrying out such delegated authority, the State, local and Tribal governments agree to involve each other in a consultative manner and to work cooperatively where practicable.

Each party reserves the right to comment on any other party's application for delegation. If the State or the Tribe receives delegation of a federal environmental program, the parties agree to enter into discussions which will result in a complementary approach to environmental issues, with the overall objective of consistent or compatible environmental controls in the areas under respective State and Tribal jurisdictions.

Prior to the delegation to the Tribe or State of federal programs, or for those areas where there are no federal programs, the State and the Tribe agree

to consult in such a manner as to provide consistent and cooperative environmental programs.

Subject to the limitations set forth above, and solely for the purpose of qualifying for federal contract and grant funding under federal environmental laws, the Tribe may utilize the 1873 Survey Area for program planning purposes. The Tribe's governmental status is not diminished by this Agreement, and the Tribe shall be deemed to qualify for the receipt of environmental program delegation and funding under federal environmental law subject only to the Tribe's ability to demonstrate its reasonable capability to administer an effective program on trust land in a manner consistent with applicable federal law.

Consistent with the terms of this Agreement it is the intent of the parties hereto to confirm the governmental authority of the Puyallup Tribe of Indians and to recognize the Tribe's continuing right to participate under the federal environmental programs, as provided for herein, and to receive grant assistance, develop cooperative agreements, and receive technical assistance from EPA or other federal agencies to the full extent of the law.

The terms of this Agreement or any cooperative agreement entered into hereunder shall not act to diminish the trust responsibility owed to the Tribe by the United States or preclude the Tribal government from participating in any federal environmental program consistent with applicable federal law.

The Tribe retains its rights and responsibilities to consult and otherwise participate in programs and regulatory activities of environmental agencies.

#### 4. Jurisdiction and Governmental Authority - Other Governments

The state and its political subdivisions will retain and exercise all jurisdiction and governmental authority over all non-trust lands and the activities conducted thereon and as provided in federal law over non-Indians.

#### B. Future Trust Lands

For placing new land in trust, the parties, including the Secretary of Interior, shall abide by 25 CFR (code of

Federal Regulations) Part 151 -- Land Acquisitions, as all of those standards now exist or as they may be amended in the future.

Nothing in this Agreement shall limit or modify any party's right to appeal the decision of the Secretary.

The non-Indian parties agree to support applications to place land in trust for residential purposes filed by the Tribe or its members before July 1, 1988, if the land is within the 1873 Survey Area.

Any disputes regarding violations of conditions or agreements on lands placed in trust may be reviewed by the Federal Courts, pursuant to Section XI of this Agreement.

C. Future Consultation Between the Tribal Government and Local Governments

The Tribe and local governments need to communicate and coordinate on land use and related matters. This section provides a new mechanism to facilitate these necessary communications.

The parties agree that when the Tribe or any general purpose local government which is a party to this agreement receives an application for trust or a permit which is defined as a "substantial action" in Document 7, or itself proposes to take a "substantial action" concerning property located within the 1873 Survey Area, the issuing government agency will notify the other affected governments and give an opportunity for consultation and discussion. This consultation process applies to any land proposed for future trust status, or to a change in use- on trust property. Each government retains the right to make the final decision on every such matter.

In the consultation process, the parties shall discuss the following factors as applicable:

- a. The need of the Tribe and its members for increased land;
- b. The objectives of federal Indian policy;
- c. The protection of established or planned residential areas from uses or developments which would adversely affect those areas;

- d. Avoidance of adverse effects on other current and planned development and uses, on adjacent lands and within surrounding neighborhoods;
- e. Protection of the health, safety, and welfare of the community;
- f. Preservation of open space;
- g. Protection of the physical environment from adverse impacts;
- h. Opportunity for economic growth and diversity;
- i. Provisions for providing public facilities;
- j. Concern that land may be put into trust for the primary purpose of allowing non-Indian businesses to avoid state and local taxation or where the Tribe receives no significant immediate benefits from the transaction; and
- k. The impact resulting from the removal of the land from state and local governments' tax rolls.

No predetermination of the applicable factors is contained in this Agreement, except that the non-Tribal parties agree to not raise objections to the trust applications for lands conveyed to the Tribe by this Agreement. When other land is proposed to be placed in trust, it shall be subject to the provisions of this section. Before the Tribe or a member of the Tribe files any trust land application in the future, or the Tribe authorizes a substantial change in use of land in trust, the Tribe will use the consultation process described in this Agreement.

The parties agree that the Federal District Court shall have jurisdiction in the event any party fails to follow this consultation procedure.

#### D. Governmental Services

The Tribe or Tribal members shall be responsible for the costs of all governmental services to the Tribe or Tribal members (whether provided by the Tribe or contracted for with the local governments) where those services are requested by the Tribe or Tribal members. The local governments have no duty to provide services to trust lands unless the Tribe or its members request such services, and there is a mutually satisfactory agreement regarding payment for such services.

The state and local governments shall be responsible for providing such services to non-trust lands. The Tribe may choose to provide governmental services to Indians on trust lands or may contract with another governmental unit for services it chooses not to provide to its members, unless such contracting would result in a significant disruption of service or the ability to deliver service by either contracting party. Residential services such as water, power, heat and other utilities for individual Tribal members will remain the responsibility of Tribal members unless the Tribe undertakes a housing program of the type provided by housing authorities, in which case the Tribe will be responsible. The provision of public facilities and services for trust lands will be covered by intergovernmental agreements.

E. Agreement for Fife

The Tribe and the City of Fife agree to a development fee for general governmental services and school district operational expenses as set forth herein.

a. If the total amount of trust land within the City of Fife exceeds 17% of the land area within the City of Fife, or exceeds in value an amount equal to 17% of the assessed valuation of all real property within the City of Fife, then, as to any additional lands placed into Trust, the Tribe shall compensate the City of Fife and the Fife School District in an amount and manner to be agreed to between the Tribe and the City of Fife.

b. The standard to be applied in determining the amount and manner of payment shall be that the City of Fife and the Fife School District shall receive in annual payments from the Tribe the amount of income the City and School District would have continued to receive for general governmental services and school district operations if the property would have remained in fee status (any federal impact monies received by the city or school district as a result of land achieving trust status or Indian students attending Fife School District schools shall be credited towards the above payments). The valuation of each property shall be based upon the actual use of the property, or its zoning classification, whichever yields the highest property value. For this purpose the zoning classification in the City of Fife zoning map shall be used until the Tribe adopts its own comprehensive

zoning map, at which time the Tribe's zoning map shall be used for all subsequent years.

c. If the City and Tribe cannot agree upon the valuation of trust properties or upon the amount of payment, then these issues shall be arbitrated. The parties will first attempt to reach agreement using a single arbitrator; if they cannot agree, they will use a three-member arbitration panel. The three-member panel shall be chosen as follows: the Tribe and City shall each choose one arbitrator, and those two arbitrators shall choose a third.

d. The decision of the arbitrators shall be binding on the parties and may be enforced in the United States District Court for the Western District of Washington.

e. The boundaries of Fife as of July 1, 1988 shall be used for purposes of determining the above percentages unless Fife and the Tribe agree otherwise. Section VIII.E. shall remain in full force and effect unless Fife is disestablished as a municipality; then and only then shall this agreement between Fife and the Tribe be terminated.

f. The City of Fife and the Tribe share a common goal to assure that the future development within the City of Fife will balance the need for commercial and industrial growth with the need for the preservation, enhancement and expansion of Indian and non-Indian residential areas and the protection and rebuilding of Wapato Creek as a viable fish run. The Tribe and the City of Fife will consult with and cooperate with each other in developing their respective land use plans in order to effectuate this goal.

F. Law Enforcement

In order to exercise the highest degree of cooperation, the Puyallup Indian Tribe and the state and its political subdivisions, through their respective law enforcement authorities, agree to the following program, as described in Document 7:

1. The Puyallup Tribal police will be primarily responsible for law enforcement over Tribal members on trust lands in the 1873 Survey Area. Local and state police agencies shall be primarily responsible for law enforcement over non-Tribal members and on non-trust lands, as presently provided by law.

2. Each jurisdiction is responsible for its own criminal investigations, pursuit of alleged criminals, and arrests, and for all liability or damage arising from incidents or actions involving its officers, whether or not the authority being exercised is that of the employing jurisdiction or of other jurisdictions under deputization. The employing jurisdiction will hold harmless other jurisdictions whose authority is being exercised by the officer.

3. All parties agree to minimize jurisdictional disputes by formal and informal consultation on matters of mutual interest. Specific jurisdictional problems shall be the subject of continuing and regular consultations.

IX. RESOLUTION OF PUYALLUP TRIBAL LAND CLAIMS

A. In return for the land and other benefits derived from this Agreement, the Puyallup Indian Tribe and the United States government, as trustee for the Tribe and its members, agree to relinquish all claims to any land, present or former tidelands, submerged lands, mineral claims, non-fisheries water rights connected with such relinquished land, known or unknown, within the State of Washington, and all water claims associated with or arising from such claims, subject only to the following exceptions:

1. 12.5 acres of former riverbed land confirmed to the Tribe in Puyallup Tribe of Indians v. Port of Tacoma, U.S. District Court, Western District of Washington, Cause No. C80-164T. Provided that the Tribe agrees to provide an easement for crossing and property for bridge supports to the State or a political subdivision at just compensation, for the purpose of construction of a bypass road as specified in Document 6.

2. All land to which record title in the Tribe or the United States in trust for the Tribe or its members derives from a patent issued by the United States or from a conveyance of tideland by the State of Washington. Record title means title documented by identifiable conveyances reflected in those records imparting constructive notice of conveyances according to the laws of the State of Washington, RCW Chapters 65.04 and 65.08, and the final judgments of state or federal courts.

3. Certain land presently recognized to be owned by the Tribe or the United States in trust for the Tribe within The Indian Addition to the City of Tacoma as recorded in book 7 of plats at pages 30 and 31, records of Pierce County, Washington, as follows:

- a. Portions of Tracts 2, 5, 6, 10 and 11
- b. Tracts 7 (school site)
- c. Tract 8 (church site)
- d. Tract 9 (cemetery site)
- e. Approximately 38 lots in blocks 8150, 8249, 8350 and 8442, inclusive.

No later than December 1, 1988, the Tribe may expand this list of parcels, wherever located, provided, the Tribe provides the non-Indian parties with the legal description of any such parcel, and with evidence of ownership and/or trust status of such parcel(s) being vested in the Tribe or the United States in trust for the Tribe by record title or by B.I.A. land records.

4. The lands transferred to the Tribe pursuant to this Agreement.

5. The rights to underlying lands or the reversionary interest of the Puyallup Tribe, if any, in the Union Pacific and/or Burlington Northern rights-of-way across the 1873 Survey Area, where the property over which they were granted belonged, at the time of the grant, to the United States in trust for the Tribe, or to the Tribe.

6. The presently submerged lands in the Puyallup River within the 1873 Survey Area below the mean high water line.

However, with regard to these above-mentioned six exceptions, the Tribe agrees not to infringe upon or impair current public uses or easements on such lands. The Tribe also agrees not to impair or infringe title to any existing railroad easements, permits, leases and licenses for communications or other utility facilities on such lands listed in the above-mentioned exceptions.

B. Subject to the explicit provisions of this Agreement, the terms "land claims" and "claims" as used in this section include rights and claims to minerals and other usual interests in land and claims related to alleged past trespass or damage. The Tribe waives any claim for trespass or damages against the parties to this Agreement as to claims which the Tribe is relinquishing in this Agreement.

C. Nothing in this section nor in this Agreement shall be construed to impair, eliminate, or in any way affect the title of any individual Indian to land held by him in fee or in trust, nor shall it affect the personal claim of any individual Indian as to claims regarding past sales of allotted lands or any claim which is pursued under any law of general applicability that protects non-Indians as well as Indians.

D. The Tribe and the federal government will confirm to Burlington Northern Railroad Company and its assigns ownership of the former riverbed land and any tidelands or harbor areas owned, occupied or used by Burlington Northern or its assigns in Commencement Bay. Further, the Tribe agrees not to revoke its consent to Burlington Northern, or any other railroad with lines or rights-of-way, for acts or omissions through the date of this Agreement. The Tribe will also grant a right-of-way to Burlington Northern for its existing line through the former riverbed land now in possession of the Tribe. The Tribe and federal government will confirm to Burlington Northern Railroad Company and its assigns that all existing easements, permits, leases and licenses for communications or other utility facilities shall continue to exist with the same rights, duties and benefits.

The Tribe will not impose any tax or fee upon any Union Pacific Railroad or Burlington Northern Railroad property, right of way, or railroad traffic for a period of 30 years from the date of this Agreement. The Tribe further agrees, when the 30 years expire, to limit, in perpetuity, any such taxation or fees to a proportionate share of the taxes or fees which otherwise would be paid to the State of Washington, Pierce County or other taxing district based upon the State-determined value of railroad operating property within Pierce County. The State agrees to exempt such taxes or fees, to the extent the Tribe imposes such taxes or fees, which otherwise would be paid to the State of Washington, Pierce County, or other taxing district.

E. This Agreement shall be for the benefit of all public and private landowners whose land titles might or

would otherwise be affected by the Tribal claims described above.

X. IMPLEMENTATION AND MODIFICATION

A. Structure of Agreement

This Agreement will consist of this document entitled Agreement and several separate documents contained in a technical appendix which will be an integral part of the Agreement:

1. Settlement lands
2. Payments to Members of Puyallup Tribe
3. Permanent Trust Fund for Tribal Members
4. Fisheries
5. Job Training & Placement Program; Social & Health Service Improvements
6. Blair Navigation Project
7. Future Governmental Authority, Responsibility and Cooperation

Upon ratification by the Puyallup Tribe of this Agreement, a Court Order, Congressional Act, and State of Washington legislation will be prepared.

B. Ratification By the Tribal Members

The Tribal members must ratify this Agreement by no later than August 27, 1988. Upon ratification, the parties shall immediately convene to develop a plan for implementing the Agreement at the earliest possible date.

C. Federal and State Participation

1. In order to go into effect, this Agreement requires certain actions by the United States Congress as specified in this document, including contribution of approximately \$77,250,000. To implement this Agreement, the parties shall request that Congress enact legislation, provided that the language of such legislation shall not alter in any way the terms of this Agreement, except with the consent of the parties.

2. In order to go into effect, this Agreement requires certain actions by the Washington State Legislature as specified in this document, including contribution of approximately \$21,000,000. To implement this Agreement, the parties shall request that the Legislature enact legislation, provided that the language of such legislation shall not

alter in any way the terms of this Agreement, except with the consent of the parties.

3. Among other provisions, these legislative acts will specify, and the parties agree, that (a) none of the funds, assets or income from the permanent trust fund received by the Tribe as part of this Agreement shall be subject to levy, execution, forfeiture, lien, encumbrance, or seizure; (b) nothing in the Agreement shall affect the eligibility of the Tribe or any of its members for any federal program or the trust responsibility of the United States and its agencies to the Tribe and Tribal members; (c) none of the funds, assets or income from the permanent trust fund thereof contained in or resulting from this Agreement shall at any time be used as a basis for denying or reducing funds to the Tribe or its members under any federal, state, or local program, provided the federal legislation implementing this Agreement authorizes such action by the state and local governments; and (d) none of the funds or assets transferred to the Tribe or its members by this Agreement shall be deemed to be taxable, nor shall such transfer be a taxable event.

D. Effective Date

This Agreement shall become effective when all of the following steps have been accomplished. It is contemplated that the steps will be fulfilled in the following order:

1. Approval of the Agreement by all of the parties, except the State of Washington and the United States;
2. Enactment of State legislation necessary to effectuate the Agreement (excluding actions specifically listed as having a period of time after the effective date for completion); concurrently with
3. Enactment of federal legislation necessary to effectuate the Agreement f including appropriation of funds and provisions for receiving property in trust (excluding actions specifically listed as having a period of time after the effective date for completion);
4. The conveyance of the Settlement lands to the United States in trust for the Tribe, and payment of

all funds required by the Agreement to the Tribe (excluding actions specifically listed as having a period of time after the effective date for completion). This shall be completed within 30-days of the completion of Steps 2 and 3. If the conveyance of any Port lands are delayed solely because of contamination audits and/or cleanup actions required by this Agreement, their delayed conveyance will not constitute a reason for delay of the effective date of this Agreement.

5. Entry of an order of dismissal with prejudice in Puyallup Indian Tribe v. Union Pacific Railroad Company, et al, C84-359T. The motion for an order of dismissal shall be filed within thirty days of completion of Step 4.

E. Modification

The parties recognize that they may at various times in the future wish to modify this Agreement and provisions of Documents 1-7. After ratification of this Agreement by the Tribal members, the parties will develop procedures for modification of the documents.

This Agreement shall not preclude the Tribe and any other parties from agreeing to early implementation or action on provisions of this Agreement.

XI. FEDERAL COURT JURISDICTION

A. Liability

Remedies for violation of any provision of -this Agreement shall be solely against the party or parties whose action or inaction proximately caused the violation. There shall be no joint and several liability among the parties to this Agreement.

B. Consent to Sue

All parties to this Agreement consent to suit in the Federal District Court for the Western District of Washington, Southern Division, and agree that the Federal Court shall have jurisdiction over any disputes arising from this Agreement. All parties shall enter into a limited waiver of their sovereign immunity from suit, if any, to the extent that they consent to actions seeking to remedy violations of this Agreement or its implementing contracts, and for declaratory judgment actions regarding their provisions.

This waiver of sovereign immunity will be limited to the forms of relief which will be authorized by the Federal Court consent decree: 1) specific performance of the terms of the Agreement or, if the court determines that specific performance is not feasible, 2) a remedy specified by the court which will provide a benefit equivalent to that which was contemplated by the provision of the Agreement in question, or 3) consequential damages in the event a court finds that the party has knowingly and intentionally acted in a manner so as to frustrate the purposes of this Agreement, notwithstanding Section X.C.3.(a).

XII. LEGAL DISCLAIMER

This Agreement, its accompanying Documents 1-7, and all negotiations and exchanges of technical information leading to this Agreement constitute offers of settlement and compromise of disputed issues entered into between the parties expressly pursuant to Rule 4U8 of the Federal Rules of Evidence. Accordingly, in the event that the above conditions are not met and this Agreement does not become effective, all statements and agreements contained herein and in Documents 1-7, all technical reports exchanged by the parties, and all negotiations conducted by them are in strict confidence and will not be admissible or used in any way against any of the parties to this Agreement, or the beneficiaries of this Agreement, in any legal or administrative proceeding.

Begin: Techincal Documents

## **TECHNICAL DOCUMENTS**

**Agreement  
between  
the Puyallup Tribe of Indians,  
local Governments in Pierce County,  
the State of Washington,  
the United States of America,  
and certain private property owners.**

**August 27, 1988**

AGREEMENT  
August 27, 1988

List of Documents

<u>Document</u>		<u>Number of Pages</u>
1	Lands Conveyed to Tribe	29
2	Payments to Members of Puyallup Tribe	2
3	Permanent Trust Fund for Tribal Members	3
4	Fisheries	46
5	Job Training & Placement Program; Social & Health Service Improvements	11
6	Blair Navigation Project	5
7	Future Governmental Authority, Responsibilities, and Cooperation	8

DOCUMENT 1:  
LANDS CONVEYED TO THE TRIBE

---

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document describes technical matters regarding the properties to be conveyed to or acquired by the Tribe after the effective date of the Agreement.

A. PROPERTIES TO BE CONVEYED TO OR ACQUIRED BY TRIBE

<u>Lands</u>	<u>Accepted Parcel Sizes (Acreage)</u>
Blair Waterway Property	43.4
Blair Backup Property	85.2
Inner Hylebos Property	72.9
Upper Hylebos Property	5.9
Union Pacific Property (Fife)	57.0 (1) (2)
Torre Property (Fife)	27.4 (3)
Taylor Way/East-West Road Properties	7.4
Forest, Recreation & Cultural Areas	600.0 (4)
 TOTAL, ACREAGE	 899.2

- (1) Subject to road easement of approximately 4 acres.
- (2) At the Tribe's option, an additional 22 acres can be purchased as discussed in Section G below.
- (3) At the Port's option, the entire 27.4 acres will be conveyed to the Tribe, or 24.4 acres will be conveyed along with a cash payment of \$215,622 (the Port retaining 3 acres for a non-industrial buffer along the east boundary), or none of this property will be conveyed, but will be replaced by a cash payment of \$1,967,000.
- (4) Estimated acreage which the Tribe can purchase with funds provided by the Agreement.

B. IMPROVEMENTS TO CERTAIN PROPERTIES

The local government parties, except as provided in Section G of Document 1, undertake to improve certain properties transferred to the Tribe as set forth below, and will account to the Tribe

for all expenditures and will assure the final completion of the improvements.

The following is a summary of improvements to be made by local governments and private businesses on certain properties to be conveyed to the Tribe:

<u>Property</u>	<u>Estimated Cost of Improvement</u>
Blair Waterway:	
Relocation of power lines	\$490,000
Relocation of Belt Line rail tracks	150,000
Relocation of water lines/ protection of water lines	50,000
Utility corridor & drainage	500,000
General improvements (including cleanup actions set forth in C.9.b.(1) below)	<u>400,000</u>
	\$1,590,000
Blair Backup:	
Relocation of power line into new easement	\$350,000
Protection of water lines	<u>15,000</u>
	365,000
Union Pacific (Fife)	
Grade separation	\$800,000
(Total cost \$2 million)	
TOTAL IMPROVEMENTS	\$2,755,000
TOTAL LANDS WITH IMPROVEMENTS	\$37,460,000

C. CONVEYANCE STANDARDS

1. Land size differences: It is agreed that the land acreages enumerated above are those accepted by the parties for the purposes of this Agreement. It is recognized that the actual acreages could vary as a result of the independent licensed survey of each parcel to be conducted at a later date.

As to any variation, plus or minus, from the above Agreement acreages of more than five percent, the overage or shortage will be remedied by cash payment. This acreage variance will be applied to the entire package of property conveyed to the Tribe, i.e. the sum of all surveyed properties conveyed, except for the Blair Waterfront and Blair Backup, which are

calculated separately. If the net variance brings the actual total acreage to five percent or more below the total enumerated acreages (as adjusted for Torre property ultimately conveyed) the Tribe will be compensated by cash payment for the acreage between the surveyed amount and 95 percent of that enumerated, at the rate of \$82,000 per acre or fraction thereof. If the net variance brings the actual total acreage to five percent or more above the total enumerated acreage (as adjusted for Torre property ultimately conveyed) the non-Indians will be compensated by cash payment for the acreage greater than 105 percent of that enumerated, at the rate of \$82,000 per acre or fraction thereof. The Blair Waterfront property acreage value shall have a rate adjustment of \$261,000 per acre, and Blair Backup \$110,000 per acre.

2. Conveyance of all parcels on the effective date of the Agreement includes all property, except personal property and trade fixtures.

3. The non-Indian parties to this Agreement shall maintain all properties with reasonable care and in a state of reasonable maintenance through the effective date of the Agreement.

4. All outstanding taxes, utility bills, local improvement assessments (in totality, not just assessments due to date) and other assessments must be paid in full by the owner, prior to transfer to the Tribe. This does not apply to assessments for installations, improvements or maintenance that take place after the effective date of the Agreement.

5. The City of Tacoma and its Tacoma Municipal Belt Line (TMBL) will provide normal services for the Tribe in a manner consistent with the provision of such services to all other customers of the TMBL.

The TMBL has been established as an independent tariff operated railroad and its rates are governed by the ICC in compliance with the authority of the Tacoma Public Utility Board and the Tacoma City Council. Consistent with sound business practices and based on cost of service principles, the City will contemplate, where feasible, adoption of rates reflecting volume discounts for the movement of cars based on a yearly period.

The Tribe shall receive the lowest rate available to other customers for comparable service by the TMBL.

6. On properties that are subject to continuing leases, the rent paid to the current lessor must be prorated between that lessor and the Tribe as of the effective date of the

Agreement. The leases shall be assigned to the Tribe and the Tribe will perform all obligations as the lessor under the leases. New or modifiable leases shall require lessees to maintain in effect an adequate policy of liability insurance which includes the Tribe as a named insured and holds the Tribe harmless against any claims arising out of the acts or omissions of the lessee. The non-Indian parties responsible for conveying the land shall supply the United States with a warranty deed conveying the land in trust to the United States for the use and benefit of the Puyallup Indian Tribe, and warranting that once conveyed there are no liens or encumbrances except those listed in this Document.

7. Prior to the effective date of the Agreement, the non-Indian parties shall also supply the Tribe with a survey of each tract by an independent licensed surveyor satisfactory to the parties, showing that the area does not materially differ from the acreages and locations shown in this Document. The cost of the survey shall be initially borne by the non-Indian parties, but if the Agreement becomes final, the Tribe shall reimburse the non-Indian parties the cost of the surveys. If required by the United States, each of the lands conveyed to the United States in trust for the Tribe will be accompanied by a final title insurance policy which will be paid for by the non-Indian parties to this Agreement.

8. Filling of Graving Dock, Blair Waterway Property.

The Port intends to utilize the graving dock for permanent placement of dredge material to be excavated from various Port projects which are expected to be completed or underway in the near future. During the period prior to final conveyance of this land to the Tribe, the Port shall be authorized to make such placement of materials, at the Port's option, in accordance with determinations by appropriate Federal, State and local permitting agencies allowing such placement as part of those projects. If the graving dock is fully filled during these placements, appropriate capping will be provided such that final soil surface is usable for normal container terminal development. The placement of such materials may continue at the Tribe's option after conveyance of the property. Any monitoring requirements specified by the permits will be accomplished by the Port.

9. Contamination Status and Testing Results for Blair Waterway Property.

a. Contamination testing has been undertaken on the Blair Waterway property by the Port. The report is by Applied Geotechnology, Inc., entitled Site Assessment Parcel No. 4, Port of Tacoma, Tacoma, Washington, dated January 15, 1986. At this time, the Port considers the

property to be free of any contamination which would render it unsuitable for uses intended by the Tribe, with the following exceptions:

(1) Contamination found to be present within the existing storm drainage water which passes through the property via pipe and ponds from the east into the Blair Waterway, as well as in the sediment in the Waterway below the outfall. Contamination in the pond sediments on the property has not been found to be unacceptably high. (The parties recognize, and include under the provisions of this document, the possibility that contaminated material may continue to pass through the system and be deposited in the Waterway.)

(2) ASARCO slag material used as a surfacing over the bottom and the interior toe of the graving dock structure.

(3) Reichhold Chemicals, Inc. on the east side of Alexander Avenue is currently undertaking a site closure under EPA procedures. EPA has determined Reichhold has groundwater contamination, some of which is migrating toward the Blair Waterway property. It is understood by the Port that Reichhold has full responsibility for investigation and cleanup under the direction of the EPA and will be required to perform post-closure monitoring. Groundwater remediation requires installation of extraction wells on Blair Property, installed and maintained by Reichhold, and relocated if they interfere with property development plans.

b. The Port of Tacoma will carry out the following cleanup measures:

(1) The Port will, on a one-time basis as part of its Blair Waterway Navigation Project dredging, remove any contaminated sediments which have been deposited on the floor of the Blair Waterway. The determination as to the level which constitutes contamination requiring removal shall be made by appropriate Federal agencies in the permitting process for the dredging activity. Such cleanup effort is not limited by the estimated cost set forth in Section B above.

(2) If during the approval process for filling of the graving dock, appropriate Federal, State and local permitting agencies require removal of the ASARCO slag material, the Port will remove the

material from the graving dock structure and the property before filling proceeds.

10. The federal and State legislation required for this Agreement, or other assurance satisfactory to the Tribe, will provide that the Tribe shall not be liable for cleanup costs or in any other manner for contamination on properties conveyed to the Tribe by this Agreement, except any contamination caused by the Tribe's activities after conveyance of these properties.

11. Contamination Audits and Cleanup Actions.

Contamination audits will be completed by the Port on its properties and as required, cleanup programs will be implemented. Implementation may be prior to the conveyance of such lands to the Tribe. The purpose of the environmental audits is to establish that each parcel of land to be transferred is reasonably usable for commercial/industrial development by the Tribe or will be reasonably usable for commercial/industrial development upon completion of necessary cleanup actions.

a. Conveyance Responsibilities of the Port. If any of these properties are found not to be usable for their commercial or industrial purposes due to their noncompliance with state or federal contamination laws, then the Port will perform such cleanup actions and measures (such as stabilization, capping or other in situ protection, surface cleanup, or water treatment, if necessary) in order to assure that such properties shall be made to comply with applicable law and can be used for commercial or industrial purposes.

b. Audit Procedures. The Port shall select a consultant within 90 days of the date of ratification of this Agreement. The Port will confer with the Tribe in making this selection, with the purpose of ensuring the work product being of acceptable quality to the Tribe, Port and agencies. Thereafter, the consultant shall develop a plan acceptable to the Port and Tribe for conducting contamination audits on the lands to be conveyed in accord with generally accepted auditing procedures, and shall complete such audits and provide written reports of findings to the Port and Tribe within 12 months of the date of ratification of this Agreement.

c. Cleanup Planning. The Tribe will actively cooperate with the Port in its development of least-cost alternatives for meeting cleanup requirements, if any. The alternative selected in accordance with applicable federal or state law will ensure that the property is

provided to the Tribe in at least its present level of improvement and will ensure that the property will be and remain to be reasonably usable for further commercial/industrial development and use by the Tribe.

The Port and Tribe shall review the final audit reports in order to determine whether the properties are in compliance with applicable state and federal contamination law as it relates to reasonable use of the properties for commercial/industrial development. If one or more of the properties requires cleanup action, a plan for such required cleanup shall be promptly developed and delivered to the Port and Tribe within 18 months from the date of ratification of this Agreement.

This plan shall be subject to review by the Port and Tribe, and may be further reviewed by the DOE and/or EPA to ensure that the cleanup plan will be consistent with applicable law and considered adequate to address any contamination associated with the site.

d. Dispute Mechanism. Disputes involving the selection of an auditor, acceptability of the scope of audit and findings of the audit and cleanup plan concerning reasonable usability for commercial/industrial development, and least-cost alternative selected for the cleanup plan shall be resolved either by arbitration or referral to the EPA or DOE. Resolution of disputes relating to compliance with appropriate federal or state contamination law must be referred to EPA or DOE. Otherwise issues may be resolved by referral to EPA or DOE or arbitration. If arbitration is undertaken, the selection of an arbitrator(s) will be as outlined in the fisheries dispute mechanism. Any dispute with regard to a specific site shall not otherwise affect the program with regard to any other site. Delays resulting from a dispute resolution will result in a corresponding extension of the required progress of the program. Neither party shall utilize this dispute procedure in bad faith so as to interpose delay.

e. Cleanup Procedures & Schedule. If the cleanup plan has been completed by the effective date of this Agreement, the Port within 60 days following the effective date shall proceed diligently to implement the cleanup actions to meet the completion objectives noted below. Within the bounds of applicable state contracting statutes, the Port will confer with the Tribe in making the cleanup consultant/contractor selection with the purpose of ensuring the work product being of acceptable quality to the Port, Tribe and agencies.

All cleanup actions shall be completed no later than three years after the effective date of this Agreement. If a cleanup plan is finalized before the effective date of this Agreement, the Port shall complete all required actions within 18 months from the effective date of this Agreement.

f. Remedies for Unusable Parcels of Land. If any required cleanup action is incomplete or continues beyond the third year after the effective date of the Agreement, the Port shall compensate the Tribe for the economic loss suffered by the Tribe during the fourth and the fifth years by payments of liquidated damages in the annual amount of 10% of the settlement-stated value of the affected parcel or portion of the parcel which remains unusable to the Tribe. If following the two-year period of liquidated damages the cleanup remains incomplete:

(1) Offer Alternative Lands. The Port will identify alternative lands of equal settlement stated value, suitable for similar uses, for possible transfer to the Tribe in lieu of those lands for which the required cleanup has not been completed within the required five-year period.

Any alternative lands proposed for transfer to the Tribe shall be presented to the Tribe for consideration as soon as practicable but no later than five years after the effective date of this Agreement. The Port shall concurrently provide the Tribe with a copy of the contamination audit for such alternative lands and result thereof. Such alternative lands must be acceptable to the Tribe and upon the Tribe's acceptance shall be immediately available for industrial/commercial use consistent with the terms of this Agreement.

(2) Tribal Acceptance of Cleanup Responsibility.

At the Tribe's option, while fully retaining its rights to seek damages from the Port for economic loss and/or cleanup costs under the warranty clause below, the Tribe may elect to accept the remaining cleanup responsibilities. If this option is elected by the Tribe, the Tribe shall upon acceptance hold the Port harmless from, and indemnify and defend the Port against any federal or state governmental action pursuant to contamination law due to the presence of hazardous materials, dangerous waste, or other pollution on the affected parcels or portions of parcels.

(3) The Tribe may exercise its rights under the warranty clause.

g. Warranty. As concerns contamination on conveyed properties as of the date of conveyance, the Port warrants that the properties transferred to the Tribe pursuant to this Agreement shall be reasonably usable for commercial/industrial development, and shall be subject to action for specific performance and/or damages for breach of warranty within damage limits set forth below. The Port further agrees to hold the Tribe harmless from, and to indemnify and defend the Tribe against any claim or liability which may be asserted by any private or public party due to the presence of hazardous materials, dangerous waste, or other pollution on one or more of the properties transferred to the Tribe. It is agreed that there shall be a ceiling on the Port's liability to the Tribe for economic loss and cleanup. This liability shall not exceed the settlement value of the affected property or portion thereof, directly or indirectly impaired. Solely for the purpose of these damage limitations, the following property values shall apply:

Blair Waterway	\$6.00 per s.f.
Blair Backup	2.53 per s.f.
Inner Hylebos	2.30 per s.f.
Hylebos Marina	3.31 per s.f.
Upper Hylebos	3.63 per s.f.
Torre Property	1.65 per s.f.
Taylor Way Triangle	2.88 per s.f.

12. Restrictions will be placed in the instruments transferring the lands into trust as follows:

- a. The Blair Waterway, Blair Backup, Upper Hylebos, and Taylor Way/East-West Road Properties will be used only for commercial and industrial purposes, with an emphasis on maritime-related activities. Such uses will be consistent with uses already established in the area.
- b. The Inner Hylebos property will be used only for fisheries, commercial or industrial purposes.
- c. The Torre property (Fife) (if conveyed to the Tribe instead of cash) will be used only for commercial, light industrial, retail, residential or agricultural purposes. Such uses will be consistent with uses already established in the area.
- d. The Union Pacific (Fife) property will be used only for commercial, industrial, or agricultural purposes.

Such uses will be consistent with uses already established in the area and described in Document 1.

e. The Outer Hylebos property conveyed to the Tribe by the Terminal 3 agreement with the Port shall be used only for fisheries, commercial or industrial purposes.

f. Instruments transferring the properties described in the subparagraphs immediately above will also carry a provision allowing a change in uses if the uses in the surrounding community change over time

D. ENCUMBRANCES

1. Easements

If title search reveals any easements or defects of title not covered below, all/any such easements or defects will be removed or resolved in a manner satisfactory to the parties prior to the effective date of the Agreement.

a. Easements to Remain as They Presently Exist:

(1) Blair Backup property easements #E9466 (10/24/85) and Permit #546 (7/1/75) shall remain.

(2) Inner Hylebos property has no presently known easements or encumbrances. However, any unknown and currently existing easements or encumbrances shall remain.

(3) Upper Hylebos has an access easement to Streich Brothers, which shall remain.

(4) Union Pacific property (Fife) will retain the following easements:

(a) Utility easements filed under Auditor's Nos. 225036, 2992151 and 8203310230.

(b) Slope, culvert, etc. easements filed under Auditor's Nos. 1417674, 1417677 and 1430154.

(5) Taylor Way portion of the Taylor Way/East-West Road property has an easement along the west boundary for a drainage ditch and a second easement of ten feet for a power line, also along the west boundary; both easements shall remain.

b. Easements to be Modified:

(1) Blair Waterway property has existing physical improvements including a water line, a storm

drainage system, sanitary sewer and lift station, which, except for the storm drainage system (see below) shall remain as presently existing but within a new easement approximately 150 feet in width. The water line will require a 20-foot easement [#E279 (9/18/30)] the center line of which begins at a point on a northerly line of Lincoln Avenue at a point approximately 655 feet southwesterly of the center line of Alexander Avenue, thence at right angles to said northerly line of Lincoln Avenue 145 feet, thence in a southwesterly direction parallel to Lincoln Avenue a distance of 175 feet more or less to the Blair Waterway pier headline. The storm drainage system shall be rebuilt as a underground pipe system within the modified easement. A ten-foot power line easement along Alexander Avenue shall remain. However, the power line shall be modified to permit a minimum height clearance of 40 feet (40-foot vehicles) for two each ingress/egress points to be designated by the Tribe. Parties further agree that normal marine terminal equipment wheel loads, such as those for loaded containers on chassis and straddle carriers across the 150-foot easement, shall free the Tribe from responsibility for overload damage to any underlying utilities. The existing City electrical transmission and distribution lines which cross the Blair Waterway from this property shall be removed and rerouted around this parcel or be placed underground within the modified utility easement. The following easements will be modified to reflect this agreement: #E6557 (4/9/70) and #E1062. All modifications will be completed no later than 12 months following the effective date of the Agreement.

(2) Also existing on the Blair Waterway property is a Tacoma Municipal Belt Line tail track which shall be removed before conveyance of the property.

(3) Blair Backup property north-south power line easements of 150 feet shall be narrowed to 40 feet along Alexander Avenue, and the power line shall be relocated into this modified easement while maintaining a minimum "under line" clearance sufficient to provide for 40-foot high loads to pass under or be stored within the easement as prescribed by Federal safety standards. No permanent structures will be constructed in this area.

A 35-foot power line easement along Taylor Way shall remain. However, it will be reduced to ten feet unless the City finds serious problems which would prevent the reduction and the Tribe would consider those. The power line will be modified underground or overhead to provide two each ingress/egress points with minimum wire height of 40 feet.

The following easements will be modified to reflect this agreement: #E2060 (1/15/45), #E6544 (7/21/61), #E6557 (4/9/70), #E4483 (9/29/31) #E5146 (9/26/61), #E6 539 (4/1/43), #E6539A (3/12/62), #E4278 (7/19/32).

An additional power line easement across the existing 150-foot power line easement, #J216 (10/20/43) 15 feet in width and approximately 930 feet from Lincoln Avenue, will remain. However, it will be modified underground or overhead to ensure minimum "under line" clearance sufficient to provide for 40-foot high loads to pass under or be stored within the easement as prescribed by Federal safety standards.

c. New Easements:

(1) If required by the City, the Blair Waterway property shall have an easement along and across the waterway for purposes of constructing and maintaining an underwater power line through the berthing area and from the modified utility easement. The line will be submerged to a depth sufficient not to interfere with navigation and berthing (-45 feet MLLW).

(2) Two 60-foot wide crossing permits or easements for the crossing of Alexander Avenue by unlicensed equipment connecting the Blair Waterway property and the Blair Backup property will be provided by the City at locations to be selected. Reasonable signalization or other traffic restrictions will be implemented by the City on the portion of Alexander Avenue fronting both the Blair waterfront parcel and the Blair Backup parcel, in order to avoid delays of the loading or unloading of ships at the Tribe's property on the Blair Waterway.

If a vacation of the street occurs on that portion of Alexander Avenue between the Blair Waterway and Blair Backup properties south of Lincoln Avenue to the southern boundary of the Blair Waterway

Property pursuant to existing law, the City of Tacoma agrees that the abandoned roadway will be conveyed to the Tribe, subject to any easements necessary for the provision of utilities to the area, an agreement on reasonable access to the property in order to service such utilities, and an agreement by the Tribe to conduct its operations on the property in a manner which does not damage such utilities.

The property which would revert to the Tribe is approximately 3.8 acres. If it were transferred today it would have a value of approximately \$672,000.

The cost of signalization is estimated to be \$60,000-\$100,000.

(3) If the Tribe should decide to construct a conveyor system across Alexander Avenue, the City will agree to such a system if it is environmentally sound and the public is protected from hazardous situations through the use of generally applicable engineering standards for such construction.

(4) A 25' storm drainage easement on either side of the Upper Hylebos property will be required by the City of Tacoma for future drainage improvement.

(5) The East-West Road portion of the Taylor Way/East-West Road properties shall have two each ingress/egress easements created along East-West Road and across Tacoma Municipal Belt Line.

d. Easements to be Extinguished:

(1) Blair Waterway property is bisected by a power line and tower facility. The power line shall be removed from the site and its easement shall be extinguished. This item is also recorded in 3. above as a modification which will allow this line to be wholly or partially relocated underground within the modified utility easement. An easement for Belt Line Railroad access to a small parcel within the site to be conveyed in fee, shall be extinguished.

(2) The Taylor Way portion of the Taylor Way/East-West Road properties currently has a power line easement across it that shall be extinguished, along with actual removal of the power line.

(3) The following easements will be extinguished to reflect this agreement: #E5611 (7/22/64), #E4449 (3/10/50), #E2031 (7/17/44), #E2175 (8/4/47)

2. Leases to Remain or be Provided

a. Short Term Leases (Five Years or Less):

(1) The Blair Waterway property contains a temporary storage area for Blair dredge materials. The Port may require that this area and reasonable access routes from the storage area to the Waterway and/or to Alexander Avenue be leased from the Tribe for a period of up to 12-18 months following the conveyance of that property. The Tribe shall make this land available and provide this lease, if required by the Port, at a rental rate of \$0.0488 per month per square foot, with a 90-day cancellation clause at the option of the Port. If properly permitted in accordance with Subsection C.8. of this document, this material may, at the Port's option, be placed into the graving dock as a means to vacate that area.

(2) Blair Backup property has a month-to-month rental agreement with Reichhold Chemical for 13,500 square feet for ingress and egress for \$173 per month, with a 60-day notice of cancellation; a month-to-month rental agreement with Puget Sound Air Pollution Control Agency for \$75 per month for monitoring air pollution; a month-to-month lease to Plum Creek Timber Co. for up to 15.5 acres at \$200 per acre per month for 5 years and a 5-year option as a log storage overflow yard. The Plum Creek lease shall be terminated if necessary to provide sufficient time to complete required cleanup.

(3) The Inner Hylebos property has a month-to-month lease from May 27, 1983 with Foss Maritime for 12 acres of water and 1.8 acres of land for \$250 per month, plus an additional \$1 per bundle for each log bundle handled, charged monthly, and a month-to-month agreement with Oneway Associates, Inc. for \$500 a month. This lease shall be terminated upon the effective date of this Agreement, and conveyance of the property.

(4) The Union Pacific industrial site (Fife) has one residential lease that runs until November 30, 1992, and two residential and three agricultural leases that are cancellable on no more than one year's notice.

(5) The Torre (Fife) property has a month-to-month agreement with Y and Y Farms for crop growing for \$262 per month. If this agreement is terminated when unharvested crops are growing, tenant has the opportunity to harvest, or there will be an adjustment for any damages from loss of crops.

b. Long Term Leases (More Than Five Years):

(1) Blair Backup property has a lease with the Puyallup Indian Tribe effective August 4, 1987 to August 3, 2002 at \$1 per year for 19 acres, with non-exclusive use of rail spur from Taylor Way.

(2) Inner Hylebos property has a lease with Ole & Dick's Boathouses for 7.8312 acres at a base rate of \$5000 per month until June 30, 2009, plus adjustments based on percentages of reported revenues; as adjusted annually by the Consumer Price Index.

E. FOREIGN TRADE ZONE

The current Foreign Trade Zone (FTZ) status of the Blair Backup Property will be retained with property transfer to the Tribe as a part of the Tacoma Foreign Trade Zone, FTZ #86. The Port of Tacoma is the current operator of FTZ #86 under management contract from the Puget Sound Foreign Trade Zone Association (PSFTZA), grantee of FTZ #86. The Port will cause the PSFTZA to enter into a grantor/operator agreement with the Puyallup Tribe, in lieu of the Port, as the FTZ operator of that portion of the Blair Backup Property in FTZ status (approximately 79 of the 85 acres). The same procedure will also apply to the Blair Waterway Property, a property listed in an application for expansion of FTZ #86 now before the Foreign Trade Zone Board.

The Tribe will have the option of remaining a PSFTZA FTZ #86 grantee contract manager of the property, or, if the Tribe so chooses, separately apply as a separate FTZ grantee. Should the Tribe pursue separate FTZ grantee status, the Port of Tacoma will support the Tribe's application on both the Blair Waterway Proper ty and Blair Backup Property.

F. PORT/TRIBAL ARRANGEMENTS FOR FUTURE FEES, CHARGES AND SERVICES

The Tribal commercial shipping terminal facilities will be subject to Federal maritime laws. The Port and the Tribe agree to work within such federal laws in the following manner:

1. The Port shall not charge fees for service to the Tribe or its tenants or customers on trust lands, or to commercial vessel traffic in transit to trust lands where the Tribe provides such services, or where the Port does not provide the service to the Tribe's facility or its customers and incurs no costs. The Tribe and the Port may agree to contract for such services subject to the limitations of state and federal law as described below.
2. Where permitted under federal law, the Port and the Tribe shall reach an agreement which shall permit the Tribe to collect and remit to the federal government the same fees or costs as would be collected and remitted by the Port.
3. The Tribe agrees that where federal law does not permit the Tribe to collect such fees or costs but requires the Port to collect fees or costs and remit such fees or costs to the federal government (such as fees for dredging), then such collection will be considered as implementing federal maritime law provisions of this Agreement.

#### G. UNION PACIFIC PROPERTY (FIFE)

The Tribe will receive 57 acres of land in the City of Fife, Washington, described below as Parcels I and II, less what is needed for a public roadway easement through the parcel. The 57-acre parcel is located south of the Union Pacific Railroad Company tracks between Frank Albert Road and 54th Avenue East, as shown on the attached map. The roadway easement, which is estimated to cover 4 acres, is 65 feet wide. It will be located as shown on the map, unless Union Pacific, the City of Fife and the Tribe agree to a different location prior to the effective date of the Agreement.

The Tribe will have a 6-month option, beginning on the effective date of this Agreement, to buy an additional 22 acres of land adjoining the 57-acre parcel, as shown on the attached map. The option parcel is described below as Parcel III. The option price will be the property's fair market value, based on its highest and best use, as of the date and as determined by an M.A.I. appraiser who is mutually satisfactory to the Tribe and Union Pacific. To exercise the option, the Tribe must give Union Pacific written notice within the 6-month period that it wants the property appraised. Within the following 30 days, Union Pacific and the Tribe must agree on a mutually satisfactory appraiser or, if they cannot agree, each choose its own appraiser, and they will jointly select a third appraiser to set the valuation. The appraiser will have 30 days to determine the property's fair market value. Within 10 days after receiving the appraiser's report or prior to expiration of the 6-month period, whichever occurs last, the Tribe may choose either to purchase the property or release its option. If it elects to buy the

property, closing will take place within 120 days thereafter. The cost of the appraisal will be borne by Union Pacific.

Union Pacific and the City of Fife will pay up to \$2 million for the construction of a grade separation structure at Frank Albert Road. (A two-lane underpass is currently estimated to cost \$1.9 million.) Construction will begin within 18 months after the effective date of the Agreement. If it appears construction costs will exceed \$2 million, Union Pacific and the City of Fife will make a good faith effort to modify the specifications for the grade separation structure to reduce costs or to seek funding from other sources, including the Tribe, before abandoning the project.

The easement for a public road through the 57-acre parcel will be dedicated to the City of Fife. The easement will provide that the road is to be constructed to City of Fife standards. Actual construction, maintenance and repair of the road will be by the Tribe at its expense or by others, with expense allocations subject to future negotiation and agreement. The Tribe will be responsible for any rail, utility or other development costs relative to the 57-acre parcel.

Title to the 57-acre parcel and, if the option is exercised, to the 22-acre parcel, will be conveyed subject to the following covenants, exceptions and encumbrances:

1. Covenants running with the land that the property is accepted subject to adjacent railroad uses, including without limitation, odors, noise and other impacts of 24-hour per day railroad operations; and that the property will only be used for agricultural, industrial and commercial uses that are compatible with, do not adversely affect and are not adversely affected by, adjacent railroad operations. Union Pacific's written consent will be required for uses not conforming to this provision. The Tribe or its successors is obligated to pay for any necessary buffers to limit adverse effects of railroad operations on its property, to eliminate incompatible uses of its property or otherwise to cure any breach of these covenants;

2. Covenants running with the land that smoke, dust and other emissions into the air from the property shall not exceed standards for air quality set by the Puget Sound Air Pollution Control Agency Board or its successor State or regional agency; and that noise levels from the property, as measured from any residential area not on the subject property, shall not exceed dBA levels set in Washington Administrative Code, Chapter 173-60, as hereinafter amended, or if ever repealed, the standards in existence prior to repeal.

3. The Tribe's agreement to convey easements along Frank Albert Road, Levee Road or 54th Avenue East to the City of Fife or other public body having jurisdiction over the roads, if needed to widen those roads in the future. It is understood an easement along Frank Albert Road will not be needed unless that road requires more than a 60-foot right-of-way. Conveyances would be made for just compensation;

4. Encumbrances of record, which include a mineral reservation in favor of Milwaukee Land Company; and

5. Unrecorded licenses and leases of the property, all of which will be assigned to the Tribe. The licenses are for guy wires and anchors. One lease runs until November 30, 1992; the remaining leases are subject to termination on short notice. Union Pacific consents to continuation of these leases, including the residential leases, so long as the lessees do not object to noise and other impacts of railroad operations and do not conduct activities on the lease site that adversely affect railroad operations. Rentals will be prorated as of the effective date of the Agreement.

PARCEL I:

A portion of Parcel 13 and a portion of Parcel 9 of that certain record of survey entitled "The Milwaukee Land Company, Record of Survey, Fife Properties," recorded in Book 12 of Surveys at Page 80, under Auditor's Certificate No. 1180, records of Pierce County, and located in the Southeast Quarter of Section 12 and the Northeast Quarter of Section 13, Township 20 North, Range 3 East of the Willamette Meridian, in the City of Fife, Pierce County, Washington, more particularly described as follows:

Commencing at the southeast corner of said Section 12; thence North  $89^{\circ}30'02''$  West along the south line of said section, a distance of 25.0 feet, to a point on a line that is 25.0 feet westerly at right angles and parallel with the east line of said Section 12, said point also being the True Point of Beginning; thence North  $1^{\circ}49'27''$  East along the last said parallel line, a distance of 598.96 feet, more or less, to a point on the south line of the 100-foot-wide Union Pacific Railroad Company operating right-of-way (shown as CMStP&PRRCo/UPRRCO on said record of survey); thence North  $85043r05'$  West along a straight line, a distance of 2563.73 feet, more or less, to a point 30.0 feet easterly at right angles from the north-south centerline of said Section 12; thence South  $2^{\circ}42'51''$  West and parallel with said north-south centerline, a distance of 768.50 feet, more or less, to the north line of said Section 13; thence South  $89^{\circ}30'02'$  East along the north line of said section, a distance of 710.61 feet to the west line of the land conveyed to the Milwaukee

Land Company under Auditor's Fee No. 2621632, records of said county; thence along said west line, South  $1^{\circ}07'40''$  West a distance of 573.88 feet, more or less, to a point 70 feet north of the north line of the Inter-County River Improvement right-of-way; thence South  $59^{\circ}06'49''$  East and parallel with said north line, a distance of 387.66 feet, to a point on the northerly meander line of the old Puyallup River; thence South  $60^{\circ}57'58''$  West along said meander line, a distance of 23.11 feet, more or less, to a point 50 feet northerly of said north line of the Inter-County River Improvement right-of-way; thence South  $59^{\circ}01'16''$  East and parallel with said north line, a distance of 294.73 feet, more or less, to a point on the north-south centerline of said Northeast Quarter of Section 13; thence North  $1^{\circ}12'58''$  East along said north south centerline, a distance of 351.32 feet, to a point on said northerly meander line of the old Puyallup River; thence North  $61^{\circ}17'51''$  East along said meander line, a distance of 204.26 feet; thence North  $75^{\circ}02'35''$  East along said meander line, a distance of 132.67 feet; thence North  $84^{\circ}21'02''$  East a distance of 25.20 feet to a point on a line that is parallel with and 330.0 feet easterly at right angles from the west line of Government Lot 1 of said Section 13; thence North  $1^{\circ}12'58''$  East along said parallel line, a distance of 442.76 feet, more or less, to a point on the south line of said Section 12; thence South  $89^{\circ}03'02''$  East along said south line, a distance of 959.48 feet, more or less, to the True Point of Beginning.

PARCEL II:

Beginning at the Northwest corner of Lot 2, Section 13, Township 20 North, Range 3 East of the Willamette Meridian, in Pierce County, Washington; thence running east on the north line of said lot, 418 feet; thence south parallel to the west line of said lot, 439.59 feet, to the northeasterly line of lands conveyed to Pierce County for Inter-County River Improvement, by Deed recorded in Book 509 of Deeds at page 387, under Auditor's No. 920308, records of Pierce County, Washington; thence northwesterly on said northeasterly line, to the west line of said lot; thence North 231.21 feet to the point of beginning, EXCEPTING THEREFROM the westerly 30.0 feet thereof.

Said Parcels I and II contain a total area of 57.0 acres, more or less.

PARCEL III:

A portion of Parcel 13 and a portion of Parcel 9 of that certain record of survey entitled "The Milwaukee Land Company, Record of Survey, Fife Properties," recorded in Book 12 of Surveys at Page 80, under Auditor's Certificate No. 1180, records of Pierce

County, and located in the Southeast Quarter of Section 12 and the Northeast Quarter of Section 13, Township 20 North, Range 3 East of the Willamette Meridian, in the City of Fife, Pierce County, Washington, more particularly described as follows:

Commencing at the southeast corner of said Section 12; hence North  $89^{\circ} 30' 02''$  West along the south line of said section, a distance of 25.0 feet, to a point on a line that is 25.0 feet westerly at right angles and parallel with the east line of said Section 12; thence North  $1^{\circ}49'27''$  East along the last said parallel line, a distance of 598.96 feet, more or less, to a point on the south line of the 100-footwide Union Pacific Railroad Company operating right-of-way (shown as CMStP&PRRCo/UPRRCO on said record of survey); thence North 85043'05" West along a straight line, a distance of 222.74 feet, more or less, to a point that is 73.0 feet distant southwesterly, measured at right angles to the southwesterly line of said 100-foot-wide operating right-of-way and the True Point of Beginning; thence continuing North 85043'05" West along said straight line, a distance of 2,340.99 feet, more or less, to a point 30.0 feet easterly at right angles from the north-south centerline of said Section 12; thence North  $2^{\circ}42'51''$  East and parallel with said centerline, a distance of 578.14 feet; thence North  $3^{\circ}41'24''$  West and parallel with said centerline, a distance of 240.54 feet, more or less, to a point 73.0 feet distant southwesterly at right angles to said southwesterly line of 100-foot-wide operating right-of-way; thence South 66035'10" West parallel with said southwesterly line, a distance of 2,497.22 feet, more or less, to the Point of Beginning.

Containing an area of 22.02 acres, more or less.

#### H. PLANS AND SPECIFICATIONS APPROVALS

In all cases where the Agreement calls for improvements on or benefits to Tribal property, the Tribe shall have the right of approval of the plans and specifications.

The Tribe agrees to limit the period of review to 30 working days and not to unreasonably withhold such approval as long as such improvements are consistent with the Tribe's intended use of these properties.

[6 pages of Figures belong here; not scanned 6/96]

DOCUMENT 2:  
PAYMENTS TO MEMBERS OF PUYALLUP TRIBE

---

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document describes the manner in which each qualified Tribal member will receive a one-time payment from a fund established under the Agreement.

A. ESTABLISHMENT OF FUND: ELIGIBILITY FOR PAYMENTS

The Tribe will receive \$24 million that will be placed in an annuity fund or other investment program. Each person who is an enrolled member of the Tribe at the time of ratification of this Agreement by an affirmative vote of the Tribe's members will receive a one-time payment from the fund. Each enrolled member who has reached the age of 21 at the time that the Agreement becomes effective will receive the payment as soon as possible after that date. Payments due to each member who is deceased subsequent to the affirmative vote, but prior to the date of distribution, shall be paid to such member's heirs under tribal law. All other members will receive payment upon reaching the age of 21.

B. LEVEL OF PAYMENT TO EACH TRIBAL MEMBER

It is anticipated, based upon the best available information, that each Tribal member qualified to receive a payment from the fund will receive a single payment of approximately 320,000. The level of payment is the same for each enrolled member who is qualified to receive a payment. This level is based upon an estimated enrolled membership in the Tribe of 1,400 on the date of ratification of the Agreement. Of these 1,400 enrolled members, approximately 67% of the members are at least 21 years of age and will be eligible to receive the payment when this Agreement is implemented as set forth in Section X. The remaining approximately 33% enrolled members will receive the same payment upon reaching the age of 21.

The exact payment that each qualified member will receive may be slightly higher or lower depending on the applicable interest rate, the exact number of enrolled Tribal members and the age distribution of Tribal members on the date the fund is established. The following examples show ranges of payments that

would be made to each member assuming different interest rate levels and the amount left after 21 years:

<u>Interest Rate When Fund Created</u>	<u>Percent of Members at Least Age 21</u>	<u>Range of Payment To Each Tribal Member Age 21</u>
8.0%	67%	\$17,000 - 20,000
8.5%	67%	\$18,500 - 21,000
9.0%	67%	\$20,000 - 22,000

#### C. MONEY REMAINING IN THE FUND

The fund will be in place for 21 years from the date of ratification of the Agreement. After payments are made to all qualified Tribal members, it is expected that approximately \$2-4 million will be left in the fund. The precise amount may vary depending upon the interest rate, the exact number of Tribal members and the age distribution. The decision of how the remainder will be utilized will be left to a vote of the Tribal members after all payments have been made.

#### D. SELECTION OF FINANCIAL INSTITUTION

The Board of Trustees referred to in Section III of the Agreement and Document 3 will be responsible for selecting a financial institution or institutions to administer the funds. The financial institution(s) shall be selected by the Board no later than 60 days after the Board is elected. It is the intention of the parties to this Agreement that the payments to each qualified member be made as soon as is practicable and financially prudent, as determined by the Board in consultation with the financial institution.

#### E. TRIBAL MEMBER ELECTION

Each tribal member at the time of the distribution may elect in \$1,000 increments to leave such monies in the fund. Monies held in the fund on account of such reinvestment shall earn such returns as offered by the Board.

DOCUMENT 3:  
PERMANENT TRUST FUND FOR TRIBAL MEMBERS

---

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document describes the establishment and administration of a permanent trust fund for tribal members.

A. TRUST FUND

The Tribe and its members shall receive a permanent trust fund totalling \$22 million to be held in trust by the United States for the benefit of the Tribe and its members. The purpose of the fund is to provide the Tribe a permanent resource that enhances the ability of the Tribe to provide services to its members. The full amount provided by this Agreement shall be held in trust permanently. Only the income earned from the trust may be spent. Income earned from the fund shall be used solely for the following purposes:

1. Housing
2. Elderly Needs
3. Burial and Cemetery Maintenance
4. Education and Cultural Preservation
5. Supplemental Health Care
6. Day Care
7. Other Social Services

Examples of Income Available From the Trust Fund

<u>Yield Rates</u>	<u>Income Available to Tribe in a Year</u>	<u>Income Generated Over 20 years*</u>	<u>Funds Remaining in Trust</u>
8.0%	\$1.76 million	\$35.2 million	\$22 million
8.5%	\$1.87 million	\$37.4 million	\$22 million
9.0%	\$1.98 million	\$39.6 million	\$22 million

\* The 20 year time period is chosen to demonstrate the amount of income generated over time. The Trust will be in existence permanently. Thus, the income continues to be generated indefinitely.

B. DISTRIBUTION OF TRUST FUND INCOME AND REVIEW OF TRUST FUND MANAGEMENT

Distribution of the income from the trust fund, and review of trust fund management, shall be directed by a nine-member Board of Trustees composed of the following:

1. Tribal Member Trustees: Three Trustees shall be elected by the Tribal members. Such Trustees shall not be members of the Tribal Council.
2. Tribal Council Trustees: Three Trustees shall be elected by a majority vote of the Tribal Council.
3. Federal Government Designee: The Federal Government, by and through the Bureau of Indian Affairs of the United States Department of Interior, shall appoint a federal employee designee to serve as a Trustee.
4. Financial and/or Social Service Community Trustees: The Tribal and Federal Trustees shall appoint two additional Trustees to be selected from the financial and/or social service community. Such Trustees shall be qualified and competent financial advisors from regionally or nationally recognized financial institutions of sound professional repute, or experts in delivery of social services.

C. TRUST ADMINISTRATION: The Trust Fund shall be administered, directly or by contract, by the Secretary of Interior through the Bureau of Indian Affairs of the United States Department of Interior.

D. DURATION OF TRUST: The Trust Fund shall be in existence for the duration of the existence of the Tribe, as recognized by the United States Government.

E. REVIEW AND REVISION OF TRUST ASSET ALLOCATIONS: Ten years after the date of execution of the Trust, the Tribal members may, by a majority vote of qualified members as defined by the Tribe's Constitution, change the purposes for which the funds are allocated. However, the total Trust principal of \$22 million shall not be reduced.

After the first ten-year review of the Trust Fund allocation, the Tribal members may consider and make periodic revisions or amendments to the purposes for which the trust funds are allocated in the manner set forth above, at frequencies of no less than five years and no greater than twenty years as set by the Tribal Council.

F. EXEMPTION FROM STATE REPORTING REQUIREMENTS: The Trust shall be exempt from any State reporting requirements generally

applicable to charitable or other trusts. The Trust shall be subject to tribal reporting requirements.

DOCUMENT 4:  
FISHERIES

---

A. FISHERIES ENHANCEMENT PROGRAM

Introduction. All parties to this Agreement share a common goal to protect and enhance the fisheries resource including necessary habitat in the Puyallup River and Commencement Bay Basins, while allowing construction and development to occur for the benefit of all citizens, both Indian and non-Indian.

The program elements described below were developed by a cooperative technical team comprised of fisheries experts from the Tribe, Washington Departments of Fisheries and Wildlife, and the University of Washington. Their recommendations were originally submitted to the parties on December 19, 1984 in the "Fisheries Enhancement and Management Program for the Puyallup River Drainage and Estuary."

The intent of this cooperative fisheries program between the Puyallup Tribe, the Washington State Departments of Fisheries and Wildlife, the Port of Tacoma, and local governments is to increase the current level of salmon and steelhead production released directly into the Puyallup River and Commencement Bay Basins and to enhance the fisheries resource by protecting, improving and restoring habitat.

\$7,935,000 will be transferred to the Tribe by the State of Washington for the following agreed upon types of fisheries enhancement programs: (a) new facility site acquisition; (b) hatchery construction and/or improvements to existing facilities; (c) construction and siting of net pen complex; (d) spawning channel construction; (e) improvements to existing intertidal areas; (f) creation of additional wetlands; (g) purchase of enhancement support equipment; (h) research; (i) resource facilities; (j) land acquisition for habitat protection; and (k) Inner Hylebos improvements. In addition, the State will expend \$800,000 for improvements to Wildlife's Clark Creek Hatchery to increase steelhead smolt production; the State will expend and account to the Tribe for the use of those funds, within six years of the effective date of the Agreement.

The Port of Tacoma will provide \$1,300,000 to the Tribe for fisheries enhancement; \$750,000 of that amount will be provided at the time that the Milwaukee fill project is undertaken. These funds are in addition to the \$675,000 transferred from the Port of Tacoma to the Tribe under the Terminal 3 Agreement; those funds shall be counted as part of the local government contribution to the settlement.

Implementation of the fisheries enhancement activities and programs is subject to applicable permitting requirements of Federal, State and local agencies.

In addition, the Federal government will spend \$100,000 to provide navigational lights and other equipment, to reduce conflicts between Tribal fishing and commercial shipping traffic in Commencement Bay.

Details of those enhancement programs and activities with preplanned elements are as follows:

1. Puyallup Tribal Hatchery

The State will provide funding to the Tribe to develop and operate a hatchery. Funding will be provided for the purposes of completing a ground water survey on the selected site, subsequent ground water development (if the ground water survey indicates sufficient ground water availability), facility design, and equipment. The total value of the hatchery is approximately \$2.0 million. (Estimated value is given because of the uncertainty of quantities of ground water available.)

2. Department of Wildlife Clark Creek Hatchery

The State of Washington Department of Wildlife will provide improvements valued at \$800,000 to the Clark Creek hatchery for the increased production of steelhead smolts. These improvements are expected to increase the number of smolts released by the state into the Puyallup Watershed from the current level of 100,000, to 200,000 annually. These improvements are contingent upon acquiring water from the City of Puyallup for such purpose. The City will not unreasonably withhold water for the Clark Creek Hatchery.

3. Net Pen Program

a. The State Department of Fisheries will work with the Tribe to locate a net pen rearing site(s). Fisheries will provide technical assistance to the Tribe, upon the Tribe's request, in the development of the Tribe's program.

b. It is agreed by all parties that the initial net pen rearing program will yield approximately 200,000 yearling Coho. If this level of program proves successful, it can be further expanded with the primary limits on the program size being the capacity of freshwater support facilities located within the Puyallup River Drainage.

c. The Tribe and State Departments of Fisheries and Wildlife will jointly identify those potential sites which are biologically and environmentally suitable for net pens. The parties with permitting authority will use their best efforts to facilitate the permitting of pen sites necessary to the implementation of the fisheries enhancement goals of this Agreement.

d. It is agreed upon by all parties that the net pen program can be used to accommodate a pilot program to evaluate the effects of saltwater acclimatization on total survival for zero aged fall Chinook.

e. The Tribal net pen program, including facility design, construction and siting, facility land base and support equipment, and initial operational costs, is estimated to cost \$265,000.

B. FISHERIES PROTECTION

1. Mitigation and Enhancement Measures for Specific Port of Tacoma Development Projects

The Port agrees to construct specific projects as defined below in the manner here described and to carry out the mitigation and enhancement measures described below. If these conditions are met, the Tribe agrees to not oppose the related project in any federal, State, or local permitting processes, and will not seek a restraining order or injunction or otherwise seek to delay or stop construction of the projects. In return, the Port will abide by the project constraints and interim procedures specifically named for these projects. Approval for these projects is provided as a one-time exception to the process described in Subsection D. entitled "Resolving Conflicts Between Development and Fisheries Protection." Additionally, these mitigation and enhancement measures provided by the Port for approval of these specific Port projects are agreed to satisfy the provisions of the Port/Tribe agreement entitled "Fisheries Resource and Habitat Protection and Enhancement Agreement." (Sea-Land Agreement)

a. Mitigation and Enhancement Measures

(1) Port Contribution to Fisheries Enhancement Program.

The Port will provide \$1,300,000 to the Tribe for its use in a broad program of fisheries enhancement as described in Section A. of this document. This payment is an enhancement measure for the approved

projects implemented as a part of the overall enhancement program.

(2) Reduced Fill Area and Milwaukee Waterway Shallowing:

The original plan for filling of the Milwaukee Waterway will be reduced to 72 .596 of its surface area and the net loss of area in the range of -10 to +8 feet will be totally replaced. This replacement will be by creating new intertidal habitat through shallowing against the remaining banks of the Waterway and newly created waterway end-bank.

(3) Sircum Waterway End Slope Revision:

The existing end-bank slope of Sircum Waterway is currently committed to development of new intertidal habitat as mitigation for TTI and Pier 7-D pier extensions. If any of this bank area remains unused for that purpose, the remaining end-bank slope will be increased to 2 horizontal to 1 vertical, provided that such construction shall not interfere with berthing space requirements and storm drain outfalls. Ripraping of any newly created slope will be designed to provide reasonable fisheries intertidal zone habitat.

(4) Pier Construction Standards:

All pier structures to be constructed will be typical pile-pier rather than fill; slopes under the piers in the range of -10 to +8 feet will be no steeper than 2 horizontal to 1 vertical.

(5) Slip 5 Shallowing:

Expansion of the current Slip 5 fishery mitigation intertidal habitat site will be accomplished to totally replace the net loss of area in the range of -10 to +8 feet resulting from the fill of Slip 1. Net loss of area in the range of -10 to +8 feet resulting from the Terminal 3 pier extension will be replaced at an area ratio to be determined by an under-pier shading study to be carried out by the Port, and not to exceed 1 acre new habitat to 1 acre pier coverage.

(6) Slip 1 Fill Slopes:

Perimeter diking which will form the new channel slope along the Blair Waterway will be no steeper

than 2 horizontal to 1 vertical in the range of -10 to +8 feet.

(7) Blair Waterway Dredging Slopes:

The dredging of the Blair Waterway by the Port of Tacoma to widen and deepen the Blair Waterway will be accomplished with slopes no steeper than 2 horizontal to 1 vertical in the range of -10 to +8 feet.

(8) Blair Waterway Bank Improvements:

Many of the existing Blair Waterway banks within the intertidal range of -6 to +6 feet have become overly steep and eroded to hard clay. These slopes along Port-owned frontages south of the Blair Waterway Bridge (outside of existing pier structures) will be jointly identified by the Tribe and Port, and in conjunction with Blair dredging projects will be resloped to be no steeper than 2 horizontal to 1 vertical and riprapped where necessary.

(9) Wapato Creek Blair Waterway Outfall:

The outfall structure will be lowered to an elevation which will allow direct fish passage at low tides. The elevation will be determined by agreement between the Tribe and Port considering reasonable fisheries needs and construction complexities presented at lowest tide ranges. As part of this project, the Port and Tribe will also evaluate other reasonable revisions to the outlet structure which will be accomplished with the lowering.

(10) Wapato Creek Bridging:

Entrances which cross Wapato Creek to newly developed Port-owned properties south of East-West Road will be constructed as bridges rather than culverts.

(11) Inner Hylebos Shallowing:

The Tribe agrees that the Port may create intertidal habitat within the Inner Hylebos property to replace the net loss of area in the range of -10 to +8 feet resulting from the construction of the Northeast Blair Pier, at an area ratio to be determined by an under pier study to be carried out by the Port, and not to exceed 1 acre new habitat to 1 acre pier coverage. This is estimated to be less than 2 acres of new intertidal area. This habitat improvement will be accomplished at no cost to the tribe.

The Port will work with the Tribe to locate future mitigation habitat improvements on the Inner Hylebos property. This will make it possible for the Tribe to use its fisheries funds in other areas.

b. Staged Development:

It is recognized by the parties that the approved development projects will not all be undertaken in the same period. As an example, the Milwaukee Waterway may be filled prior to Slip 1. Accordingly, the various approved mitigation and enhancement projects are to be constructed to coordinate with certain development projects when they are undertaken, as follows:

<u>Development Project</u>	<u>Mitigation &amp; Enhancement</u>
Enhancement Funding (not aligned to a specific project)	\$1,300,000 Fisheries Enhancement Program
Milwaukee Waterway Fill	Milwaukee Waterway Shallowing; Sitzum Waterway End-Slope Revision
Expansion of Port Terminal 3	*Slip 5 Shallowing; Slip 1 Fill Slopes and Pier Construction Standards
Northeast Blair Pier Habitat	Inner Hylebos Shallowing Creation; Pier Construction Standards
Blair Navigation Project; Blair Dredging	Blair Waterway Bank Improvements on Port Property, Blair Waterway Dredging Slopes
Blair Bridge Removal and Replacement (or Bypass)	Wapato Creek Blair Waterway Outfall
Entrances Over Wapato Creek	Bridge in Lieu of Culvert

\*If staged filling and construction takes place, mitigation and enhancement will be completed in direct proportion to the area modified by construction.

c. Timing of Approved Project Mitigation and Enhancement

The Port agrees to schedule construction of development projects and of mitigation and enhancement measures with the objective of minimizing fisheries impacts, e.g., critical habitat availability during fish migrations.

The Port will work with Tribal biologists in developing their plans. Within the cost parameters of meeting the area requirements, the Port staff will work with the Tribal staff to maximize the fisheries benefits from the proposed activities and construction design.

The Port agrees that:

- (1) All design for the mitigation project including geotechnical investigations and designs, and final plans and specifications will be complete before start of the development project.
- (2) Tribal representatives will be welcomed and encouraged to closely participate throughout the entire design and planning process.
- (3) Both the mitigation project and development project planning and construction contract specifications will include coordinated, detailed scheduling and contractor constraints to accomplish the projects with minimum impact to the fishery during progress of construction.
- (4) All permits for the mitigation project will be in hand before any impact to the fishery results from the development project.

The above-described steps will assist the Port in achieving its commitment that the completion dates of mitigation and enhancement projects will be the same as the completion dates of the corresponding development projects.

## 2. Approved Port of Tacoma Development Projects

### a. Milwaukee Waterway Fill

This project consists of filling the waterway to create additional terminal land. The Tribe agrees not to object to the Port filling 72.5 percent of the Milwaukee Waterway and the Port agrees to limit its proposed fill of the Waterway to 72.5 percent. The Tribe agrees not to object to the use of fill material taken from the Blair Waterway dredging project, which will proceed simultaneously. If that material is found to have unacceptably high contamination as determined in the federal permitting process, clean upland material may be used. Included are improvements to be constructed on the completed fill. This filling project also acts as a disposal site for material dredged from the Blair Waterway. As such, it is a part of the Blair Navigation

Project described below and in Document 6. As part of this project approval, the Tribe shall, on the effective date of this Agreement, notify the U.S. Army Corps of Engineers that the issues raised by their letters to the Corps on March 1, 1988 relating to the scope of the F.E.I.S., and May 17, 1988 relating to treaty rights, and any other letters submitted in opposition, have been resolved and are no longer to be considered in the NEPA/permit process.

b. Expansion of Terminal 3

This project consists of the filling of Slip 1 and the extension of the current Terminal 3 pier by up to 1000 feet northward. Included are the upland improvements necessary for the terminal expansion.

c. Northeast Blair Pier

This project consists of construction of a 1000 foot apron pier along the northeast bank of the Blair Waterway turning basin. Included are the upland improvements necessary for the terminal's development.

d. Blair Navigation Project

(1) Blair Waterway Dredging

This project consists of dredging of the Blair Waterway to -45 feet MLLW from Commencement Bay to Lincoln Avenue and to -41 feet MLLW from Lincoln Avenue to the south end of the Waterway, plus appropriate advance maintenance and contractor allowances not to exceed 3 feet additional depths. Project dimensions are otherwise as specified in the Blair-Sitcum Project documents of Public Law 99-662. Disposal of the dredged material is currently planned for placement in the Milwaukee Waterway Fill. If found unsuitable for that location, other disposal means found suitable in the permitting process will be accepted

(2) Blair and Sitcum Waterways Maintenance Dredging

This consists of routine maintenance of channel depths necessitated by siltation and is a normal part of any dredged channel project. It applies to maintenance dredging for the Blair Waterway Dredging Project in (1) above, and to the Sitcum Waterway, which already is at project depths. Disposal of maintenance dredge materials shall be in accordance with applicable federal law.

(3) Blair Bridge Removal and Replacement (or Bypass)

This project consists of removal of the current bridge structure and replacement of it with a new bridge providing a 300 foot navigation opening. Included are associated dredging, necessary bank revisions for abutments, and utilities revisions/relocations. If the bridge is not replaced, the project will consist only of the removal of the existing bridge and utilities revisions/relocations. This is a part of the Blair Project described in Document 6.

3. General Purpose Local Government Actions

a. Introduction. The general purpose local government parties to this document (hereinafter referred to as "local governments") and the Tribe have a common goal of protecting and enhancing the fisheries resource, including necessary habitat. At the same time, the parties have a common goal of providing economic opportunities for all citizens, Indian and non-Indian alike. The continued growth of the region is an essential element in achieving this latter goal. In order to arrive at a proper balance between these two goals and to ensure that both can be achieved, it is important to the parties that the fisheries resource be conserved and properly managed while, at the same time, providing for residential, commercial, industrial, and other development; natural resource use; and the protection of the lives and property from flooding.

In order to ensure that fisheries resource protection and enhancement are given appropriate priority in their land use planning and regulatory processes, the local governments and the Tribe agree as follows:

(1) As soon as practical following the effective date of the Agreement, the local governments shall, in consultation with the Tribe and other parties as required by law, undertake development of a watershed action plan/plans for the drainage basins comprising Water Resource Inventory Area (WRIA) #10, including the Commencement Bay, Puyallup, and other basins. The plan/plans shall be prepared pursuant to the requirements of the Puget Sound Water Quality Management Plan, related guidelines and other applicable standards.

(2) When the parties to this Agreement undertake the adoption or amendment of land use or Shoreline Master Programs within the 1873 Survey Area, the

consultation process set forth in Document 7 of this Agreement shall be utilized.

b. Objectives. Within the context of the goals and discussion contained in the introduction of this section, the following objectives are set forth which are intended to guide the preparation of the watershed action plan/plans, and any future new or amended land use plans or Shoreline Master Programs within the 1873 Survey Area:

(1) To protect that fisheries habitat in Commencement Bay and the Puyallup River Basin which is necessary for a productive fishery, while providing for other existing and future beneficial uses.

(2) To protect water quality from significant adverse effects due to the introduction of sediments and point and non-point source pollutants originating from land developments.

(3) To preserve or provide streamside vegetation, as appropriate, for the purposes of maintaining proper water temperature, minimizing increased sedimentation due to erosion, providing for invertebrate food organisms for fish populations, and preventing loss of cover which allows fish to escape predators.

(4) To minimize alteration of in-stream water flows which could be harmful to fish, resulting from structures impounding water, inappropriate channelization of streams and rivers, and improper logging and land clearing practices. In implementing this objective, the parties recognize the need to accommodate flood control facilities and activities required to protect the health, safety, and general well-being of persons within the Puyallup River Basin. Further, for the purposes of determining proper logging practices, the parties shall be guided by the regulations governing forest practices as promulgated by the Washington State Department of Natural Resources as a result of the recent Timber, Fish and Wildlife Agreement.

(5) To minimize impacts to wetlands by implementing wetland management programs including policies, regulations, acquisition programs, and/or other mechanisms as needed for wetland protection.

c. Implementation of Regulatory Controls. Subsequent to the adoption of watershed action plans, the local governments shall enact policies, regulatory measures, educational programs, and other measures as appropriate,

consistent with the extent of their authority and jurisdiction, to implement the adopted plans.

d. Other Fisheries Habitat Protection Provisions.

(1) Flood Control and Gravel Removal

(a) Pierce County will work with the Tribe and other participants to expand or modify the Puyallup River Basin Flood Control Study for Gravel Removal for Flood Control Purposes to include alternatives which are sensitive to habitat protection while providing necessary flood control measures. Pierce County will develop standards and regulations for gravel removal which are sensitive to habitat protection needs revealed by the Study, in consultation with the Tribe and other local governments.

(b) Until implementation of regulations, standards, and processes, Pierce County agrees to provide the Tribe copies of its applications for hydraulic permits and permit renewals in the Puyallup River Basin, concurrent with their submittal to the Washington Department of Fisheries.

(c) Except as set forth in (a) and (b) above, the removal of gravel for flood control purposes shall not be subject to the provisions of Document 7 of this Agreement. During the interim period, the Tribe and Pierce County will work together in an attempt to make gravel removal for flood control sensitive to habitat protection needs. In addition, in the interim, Pierce County agrees to comply with state hydraulics permits it obtains for gravel removal. The only remedy for violations of such permits remains that which is set forth under applicable laws.

(2) Habitat Protection Program. The local governments and the Tribe will establish a program to protect fisheries habitat, to the extent of their respective jurisdiction and as appropriate, in the Puyallup River Basin, including the Clark's Creek system, Voight Creek system, and South Prairie system, in accordance with the objectives set forth in b. above, to the extent of the local government's authority.

(3) Habitat Protection - Properties of Parties. The local governments and the Tribe will establish

programs pursuant to Subsections (1) and (2) above, to protect fisheries habitat for the respective properties which they own and control along the streams designated in Subparagraph (2) above. Such programs shall be in accordance with objectives 3 and 5 of Section b.

(4) Culverts and Floodgates

(a) Design and Operation Improvements

The local governments, in cooperation with the Tribe's Fisheries Management Division, will develop designs for culverts and floodgates and guidelines for installation and maintenance which will provide for improved fish passage. The parties recognize that a primary purpose of culverts and floodgates is to control flooding, and that purpose should not be impaired. It is also recognized that, at times, culverts and floodgates act as a barrier or impediment to fish passage. It is the goal of the parties to balance, to the extent feasible, the need to provide for the adequate functioning of culverts and floodgates as flood control devices and the need to allow for fish passage.

The parties agree to utilize those designs and guidelines when constructing and installing new structures or authorizing such activities on rights-of-way and properties owned or controlled by the local governments and the Tribe in areas of the Puyallup River Basin where fish passage is of concern, and where such designs and guidelines are not inconsistent with state or Federal requirements.

(b) Culverts and Floodgates - Modifications to Existing Facilities

Within one year of the effective date of the Agreement, the local governments, in consultation with the Tribe's Fisheries Management Division, will review all existing culverts and floodgates in areas of the Basin which are identified as having a significant adverse effect on fish passage with a resultant adverse impact on the fisheries resource, and will determine whether such structures are under the jurisdiction of any of the local governments. If culverts and floodgates owned or controlled by a local government are identified as having such a

significant adverse impact on the fisheries resource, the Tribe and the affected local government will cooperatively work to modify or replace such structures to provide improved fish passage. One means of financing such modifications or replacements may be utilization of the mitigation and enhancement program provided for in this document. Other culverts and floodgates owned or controlled by the local governments which are identified as obstructing or impeding fish passage, but not impacting the fisheries resource to the extent of those identified above, will be brought into conformance, where feasible, with the designs and guidelines at such time as the structures need replacement due to deterioration, damage, or other reason of diminished operability, as determined by the local government owning or controlling the structure.

(c) Inspection and Maintenance

The local governments will each develop and implement an inspection and maintenance program to ensure that their culverts and floodgates of concern in terms of fish passage are routinely inspected and maintained in accordance with the guidelines established pursuant to this program.

(5) Dechlorination of Certain Sewage Discharges. The Tribe and the affected local government shall examine each existing or planned discharge from a publicly owned treatment work, to determine whether a system to dechlorinate the discharge is required. If the Tribe and the affected local government agree that such system is not necessary to protect the fisheries resource, it shall not be required, unless otherwise required by law. In the event the Tribe and local government party cannot agree, the dispute may be submitted by agreement of the parties to the dispute resolution system provided for in this document, and the parties shall agree on the standards to be utilized by the mediator or arbitrator in deciding the issue. If the parties do not agree to submittal, or cannot agree on the standards to be utilized, the local governments reserve the right to proceed without installing a dechlorination system and the Tribe reserves its rights under this document to pursue other remedies.

(6) Vegetation

(a) Removal Agreement. The local governments will, upon the effective date of the Agreement, agree to be bound by the terms of the "Stipulation Re: Vegetation Removal" entered in Puyallup Tribe of Indians v. Stortini, C79-269T, U.S. District Court, Western District of Washington at Tacoma.

(b) Habitat Protection Plan. The local governments will adopt within three years of the effective date of this Agreement, utilizing the process set forth in this section, a fisheries vegetation habitat protection plan consistent with the objectives enumerated in Subsection b.

(7) Adoption of Fisheries Habitat Protection Plan, Programs, and Regulations for Treaty Fishing Rights Purposes.

The Tribe and local governments agree on the need to allow for economic growth, development and flood control while providing necessary protection of our fisheries resource. They do not agree on the extent and scope of the Tribe's treaty rights to protect the fisheries resource.

The Tribe may review existing land use plans, regulations, and policies of participating local governments, to consider if any changes are needed to provide such protection. After review of these documents, the Tribe may submit to the local governments recommendations for changes which would result in greater protection to the fisheries resource. The decisions as to revising their plans and regulations and issuing permits remain exclusively within the decision-making authority of the participating local governments as to non-trust lands.

The parties agree that upon completion of the review and any resulting changes made by a local government, the Tribe shall, within a reasonable period of time, provide written notice to the local government whether such provisions, plans and regulations are satisfactory to the Tribe. To the extent that there is agreement, the Tribe, for a period of time specified in the notice, shall not attempt to object to or otherwise interfere with the projects which meet these locally adopted standards. To the extent there is not agreement, then the local government will issue permits as provided for in its plans and regulations, and the Tribe reserves its rights to

object to such projects subject only to the other terms and conditions of this document.

C. ACCESS TO FISHERY

1. Navigation Agreement

Introduction: Purpose and Scope. This agreement by and between the Tribe, the United States, and the City of Tacoma is intended to promote the general health, safety and welfare of all parties who use and enjoy the waters and the harbor of Commencement Bay, particularly during the gillnet fishing season. It is the intent of the parties to this agreement, in consultation with the commercial shipping community (represented by the Puget Sound Steamship Operators and the Port Angeles Pilots Association), the Port of Tacoma, and the United States Coast Guard, to prescribe a means of regulating vessel traffic and, in particular, deep draft commercial vessel traffic, thereby eliminating or reducing the potential for problems and conflicts during Tribal gillnet fishing seasons in the waters of Commencement Bay.

This agreement prescribes a vessel traffic lane for the movement of deep draft commercial vessels in and out of port, anchoring sites for ships awaiting berthing space or otherwise seeking safe harbor anchorage, and operation and communication procedures necessary for effective implementation. It governs navigation matters only on those waters generally known as Commencement Bay and generally described as beginning at turning buoy "TC" as the northern boundary, and running south past Browns Point and Point Defiance to the Tacoma Harbor, and ending at the mouth of the Puyallup River and the tidelands and inlets which comprise the general Port area and developed lands. Nothing in this agreement shall pertain to the inlets and waterways known as the Puyallup River, Tacoma City Waterway, Milwaukee Waterway, Blair Waterway, Hylebos Waterway, St. Paul Waterway, Sitzum Waterway, and Middle Waterway.

This agreement is subject in part to the approval of the United States Coast Guard. Nothing in this agreement shall alter in any manner Title 72 COLREGS or the rights of the United States to enforce its laws and regulations governing navigable waterways. The Coast Guard has informally communicated with the parties to this agreement that they wish to cooperate with them to assure safety on the waterways of Commencement Bay. This agreement adequately addresses the rights of the Tribe and its members to conduct their fishing activity within Commencement Bay reasonably free from interference by shipping activities.

a. Navigation Lane and Section Boundaries

(1) There shall exist a navigation lane beginning at the turning buoy "TC" (see attached map), off of Browns Point located at 122°27'18" long. W and 47°19'30" lat. N, proceed in a straight line to Position (A) located at 122°28'14" long. W and 47°18'57" lat. N. This line indicates the centerline of the first leg of the vessel traffic lane.

A radius of 1200 yards (with the axis of rotation located at 122°27'38" long. W and 47°18'32" lat. N) connects Position (A) with Position (B) to form a continuous centerline for the vessel traffic lane.

Beginning at Position (B) located at 122°28'169' long. W and 47°18'07" lat. N, proceed in a straight line to Position (C) located at 122°26'23" long. W and 47°16'48" lat. N. This line represents the centerline of the second leg of the vessel traffic lane. These two (2) legs of the vessel traffic lane are to be approximately 500 yards wide (250 yards to each side of the centerline). This will enable inbound and outbound deep draft vessels safe transit of the Tacoma Harbor.

Position CN (122°26'13" long. W, 47°16'52' lat. N) and CS (122°26'127" long. W, 47°16'40' lat. N) represents the apexes of four (4) straight lines drawn to shore which would make up three (3) transit sections, Section 1, Section 2 and Section 3. Section 1 would be designated for all traffic transiting to or from the Hylebos or Blair Waterways. Section 2 would be designated for all traffic transiting to or from the Sitzcum or Milwaukee Waterways. Section 3 would be designated for all traffic transiting to or from the St. Paul, Middle or City Waterway or to the Grain Terminal.

All legs of the vessel traffic lanes (TH) will be marked by range markers of approved design. Sections are identified as follows:

Section 1 Boundaries are: Beginning at Position (CN), proceed in a straight line to Position (D) located at 122 24'50" long. W, 47 °17 '19 " lat. N. Beginning at Position (CS), proceed to Position E located at 122 24'53" long. W, 47°16'42" lat. N. Line CND and Line CSE represent the boundaries of Section 1.

Section 2 Boundaries are: Beginning at Position (CN), proceed in a straight line to Position (E) located at 122 24'53" long. W, 47°16'42" lat. N.

Beginning at Position (CS), proceed in a straight line to Position (F) located at  $122^{\circ}25'46''$  long. W,  $47^{\circ}16'11''$  lat. No. Line CNE and Line CSE represent the boundaries of Sectors 2.

Section 3 Boundaries are: Beginning at Position (CN), proceed in a straight line to Position (F) located at  $122^{\circ}25'44''$  long. W,  $47^{\circ}16'11''$  lat. N. Beginning at Position (CS), proceed in a straight line to Position (G) located at  $122^{\circ}26'44''$  long. W,  $47^{\circ}16'07''$  lat. N. Line CNF and Line DCF represent the boundaries of Sectors 3.

b. Anchorage Sites

During the gillnet fishing season described below, there shall be 4 anchorage sites designated in the harbor area. These sites are to be used for ships waiting to offload their cargoes, awaiting berthing space, or otherwise in need of anchorage in Commencement Bay. The assignment of the four anchorage sites shall be determined by the Tacoma Harbormaster in accordance with the following priorities: (1) vessels awaiting a berth in Tacoma, (2) vessels which for some reason have been required to vacate a berth in Tacoma and are awaiting the opportunity to return to that berth, or (3) other such considerations as the Harbormaster shall deem appropriate. However, no priority or discrimination shall be made outside of the provisions set forth in this section toward any vessel calling on a Tribal or other Port facility. The four anchorage sites shall each have a 500-yard radius. The center for each site is as follows:

City Waterway Anchorage	$122^{\circ}26'17''$ long. W, $47^{\circ}16'14''$ lat. N
Sitcum Waterway Anchorage	$122^{\circ}25'22''$ long. W, $47^{\circ}16'48''$ lat. N
Hylebos East	$122^{\circ}25'22''$ long. W $47^{\circ}17'26''$ lat. N
Hylebos West	$122^{\circ}25'43''$ long. W $47^{\circ}17'26''$ lat. N

The City Waterway, Sitcum Waterway, and Hylebos East anchorage sites may be assigned by the Harbormaster without regard to sequence or priority. However, unless extraordinary circumstances require otherwise, the Hylebos West site shall not be used until or unless the other three sites (City Waterway, Sitcum Waterway and Hylebos East), are already in use.

c. Operations and Communications

The parties to this Agreement recognize that from time to time circumstances will require an evaluation of the terms and conditions of this Agreement. Furthermore, the parties recognize that some circumstances require only temporary attention while other circumstances may require a reexamination of the terms of this agreement. Therefore, all parties agree that a flexible approach to the matters of navigation, vessel traffic and anchoring will best meet the needs of the Tribal fisheries and the needs of dynamic and growing commercial port operations, both Tribal and non-Indian, and that temporary adjustments to this agreement will not be unreasonably denied. To this end, the parties to this agreement shall conduct their affairs in the following manner:

(1) On or before June 30 of each year, the Tribe and the City of Tacoma shall designate an individual or individuals who shall be the principal authority to enforce this agreement. For the length of the gillnet fishing season, these individuals shall make themselves reasonably available for communication and consultation with one another on matters relating to the terms and conditions of this agreement.

(2) It is understood that the tribal gillnet fishing season depends on the migration of the fish, and that test fishing is usually required to determine when the season is to be opened and precludes pre-set seasons. When season dates are set, the Tribe shall promptly convey that information to the parties to this Agreement, including periods within those dates in which Tribal fisheries will not operate. The dates designated for fishing will become the official calendar for the implementation of this agreement. The Tribe may change this calendar by giving written notice to the Harbormaster.

The Tacoma Harbormaster shall be responsible for communicating through a "Notice to Mariners" the official calendar to the various parties involved in navigation and vessel traffic, including but not limited to: the U.S. Coast Guard, the Puget Sound Steamship Operators, the Port Angeles Pilots Association, the Marine Exchange, the Port of Tacoma, and such other individuals or organizations which he shall deem necessary.

(3) Any vessel, or representative of a company operating a vessel, of 100 tons or more arriving or departing Tacoma Harbor between the beginning and

ending dates of the gillnet fishing season will contact the Tacoma Harbormaster at least 3 hours prior to arrival or departure on VHF Channel 9 or by telephone (206) 591-5733. Vessels arriving Tacoma Harbor will provide the following information: ETA to turning point A (see attached map) and destination Tacoma Harbor (berth or anchorage).

Vessels departing Tacoma Harbor will provide the following information: Vessel's present berth or anchorage location, intended route to Position C via vessel traffic lane (Section 1, 2 or 3), and time of departure.

During the fishing season, shipping agents and/or owners should, if at all practicable, attempt to schedule the arrival and departure of their vessels in Tacoma Harbor between the hours of 0800 and 1700.

(4) Upon receipt of notification that a vessel will be arriving or departing, the Harbormaster shall notify the representative of the Tribal fishery, to alert the Tribe to any pending vessel traffic. The Tribal representative shall then notify Tribal fishermen of such traffic and prescribe whatever actions are necessary to clear the appropriate passage.

(5) All vessels engaged in gillnet fishing shall display the proper navigational lights in accordance with Title 72 COLREGS.

(6) Upon the effective date of the Agreement, the Coast Guard in cooperation with the affected parties shall erect three marker lights which shall distinguish the centerline and the two outer legs of the vessel traffic lane. These lights shall be illuminated during the fishing season to mark the vessel traffic lane and thereby aid those engaged in Tribal gill net fishing to avoid the vessel traffic lane when ships are passing through the lane.

d. Notification of the United States Coast Guard

This agreement will be submitted to the United States Coast Guard for their information and approval. Upon approval by the Coast Guard, portions of this agreement shall become part of the vessel traffic control system (VTS).

e. Modification

This agreement may be reviewed and renegotiated upon the written request to do so by any of the parties. However, those portions which are adopted by the United States Coast Guard as a part of the vessel traffic control system, or otherwise incorporated in Coast Guard regulations, will be subject to review and subsequent action by the Coast Guard.

## 2. Fishing Site - Port of Tacoma/Milwaukee Peninsula

The Port of Tacoma agrees to provide and maintain a one-lane gravel road access from the E. 11th Street Puyallup River Bridge to the river mouth for Tribal fisheries access, and will provide emergency vehicle access through the Sea-Land site. The 12 foot wide roadway will be along the east riverbank on Port property. Turn-around space will be provided at the mouth. The Tribe agrees not to assert any claims for access to fishing grounds or activities on any other properties currently owned by the Port.

## D. RESOLVING CONFLICTS BETWEEN DEVELOPMENT AND FISHERIES PROTECTION

Introduction. The parties to this Agreement recognize that the Puyallup River and Commencement Bay and are resources of local, regional and national significance. The fisheries resource of the Puyallup River Basin is culturally and economically important to the Tribe; at the same time, the parties acknowledge the international importance of the Port of Tacoma, located at the mouth of the River, and the regional and national significance of the Tacoma metropolitan area as part of the urban core of the Pacific Northwest. The parties share a common goal of providing economic opportunities for all citizens of the area. The continued growth of the region is an essential element in achieving that goal.

It is important to the parties that resources be conserved and properly managed, while providing for commercial development and natural resource use. This section sets forth procedures for resolving conflicts between fisheries resource protection and economic development. No party shall be bound to apply its provisions to other areas or issues, since this process was developed specifically in the context of the Agreement, and to fit the conditions in the Puyallup Basin and Commencement Bay.

### 1. Scope and Applicability of Procedures

a. Area. This procedure applies to certain projects within the 1873 Survey Area and Commencement Bay, as that area is defined in Section VIII of the Agreement. The procedure may be applied to projects outside that area if the Tribe and the developer agree to do so.

b. Projects. This procedure applies to and is required of any project to be undertaken by a party to this Agreement that will require the issuance of a permit under the authority of any of the following statutes, including regulations enacted pursuant thereto; provided said procedure shall apply only to that portion of the project subject to the statute:

- (1) The Washington Shoreline Management Act of 1971, RCW Ch. 90.58;
- (2) Section 404 of the federal Clean Water Act, 33 U.S.C. §1344;
- (3) Section 10 of the Rivers and Harbors Appropriations Act of 1899, 33 U.S.C. §403; and
- (4) 22 U.S.C. 5491, requiring the approval of the Secretary of Transportation for the construction of bridges.
- (5) The State Hydraulic Act, RCW 75.20.

The procedure may be applied to other projects in cases where the Tribe and the developer agree to do so.

It is the intent of the parties that this will be a permanent process. Accordingly, if the type and scope of projects requiring permits under any of the statutes listed above are diminished, the Tribe may request and shall receive amendments to this document that incorporate the requirements of those regulations in existence as of the date of implementation of this Agreement.

This procedure is not applicable to gravel removal and flood control activities of Pierce County. See Subsection 3.d. of this document for specific provisions governing those activities.

c. Parties

- (1) Government Parties. The governments that are parties to the Agreement are also parties to this procedural requirement. This procedure does not apply to specified Port of Tacoma projects with advance approval, as specified in Section IV of the Agreement.

This document satisfies the provisions of the portion of that agreement entitled "FISHERIES RESOURCE AND HABITAT PROTECTION AND ENHANCEMENT AGREEMENT" which

established that Port development and construction projects meet acceptable standards, contain a fisheries enhancement element, and establish a mechanism for resolving disputes over those commitments.

(2) Other Participating Developers. This procedure is also available to other persons or entities where there is mutual agreement by the Tribe and developer to use this process.

(3) Tribe. The Puyallup Indian Tribe is a party hereto.

d. Exclusivity of Procedure

(1) In General. The parties agree that this is the exclusive procedure for the resolution of disputes between the Tribe and participating developers as to projects described above and, subject to the retained rights specified below, the rights and remedies of the parties are limited to those set forth in this sub-document.

Specifically, the Tribe agrees not to oppose any project in any Federal, State or local permitting process, or to seek a restraining order or injunction, or otherwise to seek to delay or stop construction of a project for which the developer has followed and complied with the procedure and requirements imposed by this sub-document.

Additionally, projects utilizing and complying with these procedures are not subject to the "Land Use Matters - Land Use Decision-Making" procedures, standards or remedies pertaining to land use and consultation in Document 7.

(2) Collateral Attack. It is the intent of the parties that the effect of this sub-document not be diminished or evaded by any means. A participating developer agrees not to change its business or project identity for the primary purpose of evading its obligations.

The Tribe agrees not to avoid this process by lending direct or indirect support, financial or otherwise, to persons or entities opposing a particular development project.

e. Retained Rights

(1) Tribal Rights. For any project which does not utilize this procedure, the Tribe retains whatever rights, remedies and authority it may have to protect the fisheries resource and its fishing rights. The Tribe shall not be obligated to refrain from opposing such project in any manner, including actions in federal court and/or under federal, state, or local permitting procedures, to address its concerns. The Tribe agrees, however, not to attempt to exercise direct regulatory authority over non-Indians on non-trust land, including enforcement in Tribal court.

(2) Developer Rights. Any developer who does not utilize this procedure, for the reasons set forth above, retains all of its otherwise available rights, defenses and remedies with respect to such project or the property to be utilized for the project.

f. Term of this Procedure

(1) Governmental Parties. 20 years, except for the Port of Tacoma.

(2) Port of Tacoma. 50 years. Provided, that at the expiration of 20 years, the Port and the Tribe shall undertake a comprehensive review and renegotiation of this document. Any issues unresolved after such renegotiations shall be submitted to an arbitrator or a tripartite panel of arbitrators for binding resolution, utilizing procedures similar to those provided below. Any revisions agreed upon or imposed by arbitration must leave in place a binding dispute resolution system effective during the entire term of this process.

g. Periodic Review. The parties agree to conduct a formal review of this process every five years, or more frequently by mutual consent, and to engage in good faith negotiations on amendments desired by any party. This covenant is in addition to the requirement for renegotiation between the Port of Tacoma and the Tribe at the expiration of 20 years.

2. Review and Arbitration Procedure

a. Formal Notice to Tribe. The developer will formally request that the Tribe review the proposed project. Information concerning the nature of the project will be provided by the developer at a level of detail normally provided to federal regulatory agencies.

b. Tribal Participation in the Agency Review Process. The Tribe, in addition to other appropriate governmental units, may participate in federal, state, and/or local scoping sessions and all other joint agency sessions held pursuant to federal, state, or local laws and regulations to review the proposed project. The parties shall make every reasonable effort to arrange mutually satisfactory times for these joint agency scoping and review sessions.

A developer will establish reasonable notice and opportunity for the Tribe's participation by sending certified letters to the Fisheries Management Division and Law Office of the Tribe proposing a session at least 15 calendar days after the Tribe's receipt of the letter. If the Tribal officials or staff have a conflict in attending the session, they must, within the 15-day period, provide written notice of the conflict and propose an alternative meeting date within 28 calendar days of the receipt of the developer's letter, or another mutually agreed upon date. Failure of the Tribe to participate in these joint sessions after such notice will constitute its concurrence in the proposed project for purposes of this Agreement.

c. Formal Review Joint Project Review. In addition to participating in the agencies' review process, the Tribe may request a joint Tribal/Developer review to be commenced within 30 days after it receives notice. The review will cover the project and the proposed mitigation and enhancement measures, with the intent of mutually resolving any differences concerning the nature of the facility, preliminary design, level of impacts to existing habitat, and acceptability of the proposed type and level of mitigation and enhancement to be provided.

d. Formal Objections. If the Tribe has an objection to the proposed development plan, or if the Tribe believes that further information or studies are needed, it must state in writing the nature of its objections or the information sought, and deliver that statement to the developer within 45 calendar days following formal notice by the developer. If further information is provided, the Tribe has 15 calendar days from the receipt of such information or studies to file its written objections to the proposed development plan with the developer. The Tribe may obtain a 15-day extension of this period by notifying the developer prior to the end of the first 15-day period. If a binding decision is issued by a mediator that no further studies are needed, the Tribe has 15 calendar days to file its written objections to a proposed development plan with the developer. Failure to provide a written statement of objections within the

required time periods will constitute the Tribe's concurrence in the project.

e. Request for Studies. The Tribe may request studies to establish information not previously available and to evaluate the acceptability of the proposed design of the project or mitigation and enhancement measures. The Tribe and the developer should make every effort to anticipate all study requirements and contingent study requirements, and to agree upon their timing and sequence. The studies required shall be only those necessary to allow a reasonable decision concerning the design of the project and appropriate mitigation and enhancement. Generally, such studies will be reasonable in scope, in length of time to conduct, in expense relative to the likely magnitude of the fisheries impact, in benefit to be gained from such studies, and in relation to the size and cost of the development project.

If the necessity for and scope of studies is mutually agreed to between the developer and the Tribe, or ordered by the mediator/arbitrator, the studies will be accomplished. Once the specified studies and any contingent studies are completed, no further studies will be required of the developer, unless unanticipated and unforeseen results or events compel the conclusion that further studies are necessary. The developer shall bear the costs of all studies agreed to or required hereunder.

If a study is conducted by a third party, the developer and the Tribe shall have a right to have input at the following stages of the study: planning and design, including the nature of any tests and examinations and the way in which they are to be carried out; conduct of the study in the field and laboratory, including the right to be present when such activities are carried out; and, preparation of reports describing the study results.

f. Formal Acceptance. If the Tribe timely objects to a proposed development plan, the parties will negotiate in good faith in an attempt to resolve their differences for at least 15 calendar days following the receipt by the developer of the Tribe's objection. Following the expiration of that 15-day period, either party may elect to proceed to mediation, as described below. All other disputed matters will be negotiated for a minimum of 5 calendar days before proceeding to mediation.

g. Failure to Agree - Mediation.

(1) Scope. Any matters in dispute which are subject to this procedure may be resolved using the mediation

provisions of this section. It is intended that negotiating and mediating methods be utilized to encourage timely settlement of disputes, and the methods set forth may be varied by mutual agreement to achieve greater effectiveness. The parties agree to conduct their negotiations in good faith; each party agrees not to engage in any tactics or measures designed to hinder, delay, or obstruct the accomplishment of the other party's objectives. The mediator or arbitrator may take any such tactics into account in rendering an advisory or binding decision.

(2) Request for Mediation. If negotiations fail to produce agreement on any disputed issue, and the specified minimum negotiating periods have elapsed, either party may request the services of a mediator (see Subsection i, below). Mediation should commence as soon as the mediator has been selected and is available, and must continue for at least 15 calendar days, unless agreement is reached or it is apparent to the parties or to the mediator that further negotiations would be futile.

(3) Decision by Mediator.

(a) After the above time requirements have been satisfied, either party may request an opinion from the mediator as to the matters in dispute. Except as provided in the following

subsection, the opinion of the mediator shall be binding upon the parties.

(b) Prior to the mediator's decision, either party may elect arbitration of issues pertaining to the nature, scope, timing and success of mitigation and any enhancement requirements, set forth in Subsection h.

h. Arbitration

(1) Request for Arbitration. A party may request arbitration by delivering notice of such request to the other party.

(2) Arbitration Procedures.

(a) The party first requesting arbitration has the responsibility for arranging for services of the designated arbitrator and shall deliver a copy of this Agreement to the arbitrator. Ex parte telephone communications solely for the

purpose of securing the arbitrator's service and arranging a hearing date are not prohibited.

(b) The parties shall attempt to agree on a date and place of hearing. If agreement cannot be reached promptly, the arbitrator shall make those choices. The hearing shall take place within 20 to 30 days following the selection of the arbitrator, and if the designated arbitrator cannot serve within that time period, a party may opt for the selection of a different arbitrator. Dates set for hearing may be continued upon mutual agreement or for good cause shown to the arbitrator.

(c) The arbitrator may require any party to attend as a witness, and to bring any book, record, document or other evidence. Depositions of any party may be taken in the same manner and upon the same grounds as provided for in the taking of depositions in the Federal Rules of Civil Procedure.

(d) The arbitrator's award is final and binding on the parties, except when:

1. the award was procured by fraud, corruption or other undue means; or
2. the award or the procedure by which it was issued exceeds the arbitrator's authority; or
3. arbitration was held without proper notice to the aggrieved party.

(e) Post-hearing briefs, if required, shall be submitted within 14 calendar days from the final day of hearing.

(f) Written arbitration awards shall be issued within 20 calendar days from the date of hearing or the arbitrator's receipt of post-hearing briefs, shall be short and succinct, and shall be limited to the standards and criteria set out in this document. Unless otherwise agreed, such ruling shall not require mitigation and enhancement of the developer which are more onerous than those proposed by the Tribe, nor less onerous than those proposed by the developer. The parties' contract with the arbitrator(s) shall provide that a reasonable

portion of the arbitrator's fees will be paid only after a decision is timely rendered.

(g) Unless otherwise agreed, the selected arbitrator(s) will retain continuing jurisdiction to:

1. modify an award in order to correct evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
2. rule on issues regarding compliance with a prior award; enhancement and mitigation credits; and penalties, forfeitures and other such remedies.

i. Selection of the Mediator or Arbitrator

(1) Qualifications. A mediator should have the personal characteristics and demonstrated skills needed for effective mediation. That person preferably should be a capable fisheries biologist. An arbitrator should have the skills and experience necessary to hold a satisfactory hearing and render a reasoned decision. While a capable fisheries biologist is preferable, other persons who are neutral in their perception of the issues, such as former judges, environmental officials and experienced arbitrators, are acceptable. If necessary, the parties may select or the arbitrator may appoint a capable fisheries biologist to assist the arbitrator in the resolution of factual disputes.

(2) Procedure.

(a) The parties may informally meet and confer to select the mediator or arbitrator. If agreement is not reached, the party requesting mediation or arbitration shall submit to the other the name(s), with needed biographical data, of one or more qualified persons to act as a mediator or arbitrator.

(b) The other party has 10 calendar days to select a name from the list, or to propose one or more qualified persons (with needed biographical data) to the other party. The requesting party has 10 calendar days to respond. Failure to respond within the 10 day period constitutes acceptance of the other party's proposed name(s).

(c) If agreement is not reached with those procedures, either party may invoke the tripartite process set forth in the following subsection. Alternatively, the parties may agree to forego that procedure, and either party may petition to the Federal District Court for the Western District of Washington, Southern Division, for appointment of an arbitrator. The court's selection shall be from a list of four names, two names (with brief biographies) having been submitted by each party.

(d) If a party elects to use a tripartite process, then each party has 10 calendar days to select an arbitrator, and the parties' selected arbitrators shall choose a third neutral arbitrator. If agreement cannot be reached as to the third arbitrator, then a petition shall be made to the Federal District Court for the appointment of an arbitrator, using the procedure in the preceding subsection.

(3) Cost Sharing for Mediation and Arbitration. The parties shall equally share the total mediation/arbitration costs (including costs of a mediator who also renders a binding decision.)

j. Other Provisions

(1) Selection of Study Entity. Where the developer and the Tribe cannot agree as to who will conduct any additional studies, the mediator/ arbitrator will make that determination based on the following criteria:

(a) The entity should have expertise in fisheries science, including familiarity with the subject matter and geographic area of the proposed project;

(b) The entity should have the personnel and equipment needed to carry out the studies in a competent, objective, and timely manner;

(c) The entity should have the ability to present the study results in a written form in an accurate, objective and understandable manner;

(d) The entity must be willing to perform the work for a reasonable fee;

(e) Any work which the entity has done previously involving fisheries-related studies must demonstrate that it meets the above qualifications;

(f) Subject to the following subsection, in those cases where the Tribe's Fisheries Management Division has the resources and qualifications to conduct the studies, it shall be given strong consideration as the appropriate entity, taking into account its knowledge of and experience with the Puyallup River watershed and its fisheries.

(g) The Tribe and the developer each retain the right to veto the other's first choice of study entity; if such veto is exercised, then the vetoed entity will not be designated.

(2) Summary of Time Constraints. See page 45.

### 3. Mitigation Standards and Procedures

Introduction: Purpose. The parties have jointly developed standards and procedures for mitigation, to be applied by developers and the Tribe. The standards include scope, design and timing criteria which incorporate the intent of the parties contained in the Agreement, as well as other "performance type criteria." "Performance type criteria" address the desired results rather than the means by which they are accomplished.

It is the intention of the parties to this document that future development projects within the area defined above shall contain mitigation elements.

#### a. Definitions

(1) Development Plan. The term "development plan" means a comprehensive plan pertaining to mitigation and any enhancement measures, as well as those elements of project design that will relate to protection of the fisheries habitat. Such plan must be agreed to or specified by the arbitrator prior to any loss of habitat, and must include the design, scope and timing of mitigation and enhancement measures, any contingency plans, standards for measuring the plan's success (i.e., performance standards), the post-project monitoring, study and evaluation obligations of the developer, and the specific obligations of the developer should its plans fail.

(2) Habitat. The term "habitat" means those portions of the land or water which are necessary elements of aquatic food requirements.

(3) Impact Ratio. A dredge/fill project's "impact ratio" is (a) the ratio of the intertidal area impacted by the development to the total intertidal area existing at the time of development in that half of the bay where the proposed development would be located, and (b) the ratio of the wetland area impacted by development to the total wetland area existing at the time of development in that half of the bay where the proposed development would be located. Prior to the implementation of the Agreement, the parties will jointly undertake, utilizing existing information, a baseline and classification study to designate existing wetlands and intertidal areas and to determine the appropriate line dividing Commencement Bay into halfsectors. This study will take place as mutually agreed by the parties.

(4) Mitigation. The term "mitigation" means those projects undertaken to provide compensation for any and all impacts of a proposed development on the production and habitat of naturally spawning and artificially spawning stocks.

b. Utilization of Criteria. The criteria and requirements set forth in this section shall be utilized:

- (1) by the developer to establish proposed mitigation and enhancement;
- (2) by the Tribe in its evaluation of proposed mitigation and enhancement; and
- (3) by the mediator or arbitrator in resolving disputes.

c. Mitigation by Replacement of Habitat

(1) Design, Timing and Location - Goals

(a) Biological Value. Mitigation projects must have the same or equivalent biological value and function as the habitat proximately damaged or lost as a result of the project.

(b) Timing.

1. All projects. Mitigation projects must proceed concurrently with the loss or impact of habitat, meaning that ordinarily the development project will not result in a temporary loss of habitat during critical migration periods. Mitigation projects must be completed simultaneous with completion of the development project.

2. Larger impact development projects. As to dredge/fill projects having a greater than 1% impact ratio, the following steps will be taken, unless mitigation takes place prior to development:

- All design for the mitigation project, including geotechnical investigations and designs, as well as final plans and specifications will be complete before the start of the development project.
- Tribal representatives will be welcomed and encouraged to participate closely throughout the entire design and planning process.
- Both the mitigation project and development project planning and construction contract specifications will include coordinated, detailed scheduling and contractor constraints to accomplish the project with minimum impact to the fishery during the progress of construction.
- All permits for the mitigation project will be in hand before any impact to the fishery results from the development project.

(c) Area. Replacement of habitat will be based upon area of habitat lost or harmed as a result of the proposed project unless a quality credit is found to be a viable alternative.

The appropriate ratio of replacement habitat to area lost or harmed for each project shall be determined by agreement of the parties or decision of the mediator or arbitrator.

(d) Location. Mitigation projects must take place in reasonably close proximity to the impacted or lost habitat.

(2) Evaluation Criteria. The following considerations will be utilized in resolving conflicts:

(a) Value and Function. The increased or decreased biological value or function of the replacement habitat as compared to the impacted or lost habitat will be taken into account, as will the importance of the lost habitat to the designated fisheries resource. Although the biological productivity or functions of the replacement habitat will be taken into consideration, it is understood that biological productivity and function are not as a general rule a substitute for area of habitat impacted; i.e., productivity is not directly interchangeable with area. The parties agree that the area requirements are of greater importance when the development project involves filling or dredging in intertidal or wetland areas, and are of lesser importance when the development project involves pier construction or similar activity which does not eliminate the habitat. The degree of interchangeability will be determined by this process.

(b) Risk of Temporary or Permanent Loss of Habitat. The following will be taken into account in assessing whether the mitigation will be effective:

1. The proven effectiveness of the proposed mitigation measures, considering their similarity or dissimilarity to neighboring habitat, and considering whether such measures in the past have been implemented by the developer or by third parties. Less risk will be associated with habitat bearing similar characteristics, and greater credence will be given to measures previously implemented by the developer.

2. The proposed timing of the mitigation project to the extent that timing either results in a temporary loss of habitat or affects the risks (upward or downward) regarding the effectiveness of the project;

3. The likelihood that the mitigation measures will be completed on time and the probabilities generally regarding the effectiveness of mitigation projects, coupled

with, for example, the contingency plans and margins for error built into the mitigation development plan

4. The degree of reliability in the developer's past record for completing mitigation and enhancement measures on time and correcting any subsequent problems.

5. The willingness of the developer to assume obligations, such as those specified in Subsection (c) below, which will encourage the timely completion of an effective project.

6. When two or more dredge/fill projects having greater than 1% impact ratio are to be constructed simultaneously and in the same half of Commencement Bay, the impact, if any, of such simultaneous construction may be considered in determining the risk to the habitat.

(c) Project Incentives. The developer and the Tribe may agree to, or if reasonable, the mediator/arbitrator may impose, the following incentives to encourage the timely and effective completion of mitigation:

a. a performance bond or other security or financial arrangements to offset the risks regarding the effectiveness of the project;

b. additional resource improvement to offset the risks regarding the effectiveness of the project, "bankable to the extent of success beyond that which is required to satisfy the basic mitigation and enhancement obligations hereunder;

c. the retention of rights to additional suitable land to be used for mitigation, coupled with a realistic contingency plan, should initial mitigation measures fail;

d. contingency plans to fund additional enhancement measures to fully offset the negative project impact.

(d) Minimum Adjustment Factor. When consideration is made of the factors set forth in the preceding subsections, an assessment shall be

made of the probability of the proposed development plan meeting the requirements for mitigation and enhancement. The physical area of replacement habitat which would be required will generally be approximately 10% in order to compensate for the risks of failure or delay of such projects. A larger or smaller adjustment factor may be deemed appropriate after consideration of the factors set forth in the preceding subsections. Provided, however, that incremental habitat improvements attributable to that 10% mitigation increase, where the mitigation and the increased amount have been proven effective and result in a net improvement to the habitat, will be credited, to the extent of such net improvement, to the enhancement requirements, if any. They also may be credited to a mitigation bank.

(3) Remedies for Late Completion.

(a) Timeliness. Mitigation shall be deemed timely when it is completed prior to or simultaneous with the completion of the associated development project. A developer will avoid an assertion of untimely completion by installing the mitigation prior to the construction of the development project.

(b) Remedies - Wetland and Intertidal Dredge/Fill. Remedies for untimely completion of wetland and intertidal dredge/fill projects will be agreed upon by the parties or determined by the arbitrator, but in all cases will depend upon and be commensurate with the damage caused to the habitat by untimely completion, as follows:

1. Projects with 1% or less impact ratio. The remedy shall be a monetary sum or the creation of additional habitat, as deemed appropriate.

2. Projects with 1% to 10% impact ratio. The remedy shall be a monetary sum or the creation of additional habitat, as deemed appropriate.

3. Projects with Greater than 10% impact ratio. The remedy shall be the creation of additional habitat. Provided that where the late completion was due to reasons of bad

faith, a monetary penalty also will be assessed.

4. Multiple Projects. The considerations expressed in Subsection 3.c.(2)(b). above also are applicable here.

(c) Remedies - Other Projects. In all other cases, the parties may agree to, or the arbitrator is limited to, the imposition of monetary remedies for the late completion of projects, unless there is significant or lasting harm to the fisheries habitat.

(d) Monetary Remedies. All monetary remedies hereunder shall be payable to the Tribe to be used for fisheries purposes.

(4) Other Considerations

(a) Evaluation Species. Final design criteria of replacement habitat will be made according to habitat requirements of selected evaluation species.

(b) Mitigation "Banks". Mitigation banks may be created by: suitable measures taken in advance of development, or by mitigation projects which improve the habitat, to the extent of such improvement. Mitigation banks should not be centralized, must be located to accommodate the needs of the fish, and should not be used to substitute for critical habitat. Mitigation credits banked previously may be used to satisfy mitigation requirements hereunder.

Credits from mitigation banks will be used where appropriate only in close proximity to the banked project, and must perform the same or equivalent biological value and function.

(c) Incremental Value. If it is determined that an improvement to existing habitat is entitled to mitigation credit, such improvement will receive credit only for the increased value and/or area created.

(d) Termination of Pollution. Simple termination of an activity harmful to the fisheries habitat may receive credit as mitigation only if the parties so agree.

(e) Cleanup. The cleanup of contaminated areas not otherwise required by law, where such contamination exists as of the date of this Agreement, and where the area otherwise would constitute suitable fisheries habitat, or the removal of obstructions to fish passageways, may receive credit as mitigation.

(f) Required Analysis. In order to determine whether a project may go forward, and, if so, what mitigation steps will be necessary, the evaluation of project impacts must include an analysis of the impact of the project on the fisheries resource and habitat, and related construction, operation and maintenance activities, and timing. The current environmental baseline of the area and use by the fisheries resource may be considered and placed into the context of the development and related mitigation measures.

d. Mitigation by Means Other Than Habitat Replacement. Other measures which improve the fisheries resource may receive credit as mitigation, if determined to provide an adequate offset to the project's fisheries impacts.

#### 4. Enhancement Requirements

a. Definition. The term "enhancement" means projects undertaken to increase the production of naturally spawning or artificially propagated stocks, or to improve the habitat of such stocks. Enhancement activities include, but are not limited to, acquisition, construction, and improvement of habitat or propagation facilities, protective designation for public lands, provision of buffer zones, or fish stocking.

b. General Requirement. The developer shall be required to contribute to an enhancement project or fund, designated by mutual agreement or by the mediator/arbitrator, an amount equal to 10% of the amount the developer spends on required mitigation measures. Alternatively, if mutually agreed, the developer may undertake an enhancement project, such as one of the following:

- (1) Improving the quality of intertidal substrates;
- (2) Resloping existing intertidal areas;
- (3) Creating additional wetlands;

- (4) Providing net pens;
- (5) Providing or supplementing a hatchery stocking program;
- (6) Creating new spawning channels;
- (7) Creating new coho overwintering ponds.

It is the Tribe's view that if the construction or development project is to take place in the estuary, items (1) through (5) usually will be the appropriate enhancement measures. If the construction or development project is to take place in an upriver area, items (5) through (7) usually will be the appropriate enhancement measure.

c. Projects Which Improve or Increase the Habitat. The incremental costs or value, as appropriate, of mitigation measures that are proven effective, and that produce a net improvement or increase to the habitat, may be credited toward the enhancement requirement set forth in the preceding subsection, or may be banked if permitted by that subsection.

d. DeMinimus Impact. Notwithstanding the above, no enhancement is required for dredge and fill projects having less than a 1% impact ratio, and for projects where fisheries impact does not occur because of the design and execution of the development project.

e. Continuing Duties of Developer.

(1) Responsibility for Success. In all cases, the developer is responsible for ensuring that mitigation and enhancement measures, if any, set forth in its development plan are properly implemented, that the completed measures operate and function as set forth in that plan, and that such measures continue to function for a reasonable period of time. What constitutes a reasonable period of time is based upon what fisheries biologists would expect for the undisturbed habitat, including naturally occurring upset conditions. In addition, the developer must perform any post-mitigation studies or evaluations which were specified at the time of agreement or decision on the original development plan.

(2) Performance Standards. Performance standards measuring the success or failure of mitigation and enhancement projects either will be agreed upon in

advance by the parties or determined by the arbitrator. Examples of such standards are:

- (a) Whether selected evaluation species, which are to be specified in advance of the mitigation, are as abundant as in the area replaced.
- (b) Whether water quality is at least as good as in the area replaced.
- (c) Whether the fill material used to create habitat is at least as good a quality as agreed to in project plans.
- (d) Whether the amount of habitat created has been maintained over time.

f. Other

(1) Obligation of Tribe. When the Tribe undertakes development as described in Section D.1.b of this document, it will deliver notice to the planning departments of the affected governmental parties. Those parties will designate one party to review the Tribe's proposed development plans and to enforce the requirements of this document. All procedures, standards and requirements stated herein will apply to the Tribe. Provided, however, the Tribe's Blair Waterway property development is considered a preagreed project where the required mitigation and enhancement will be accomplished for the purposes of this Agreement by Blair Waterway bank improvements to be carried out by the Port as a part of the Blair Navigation project, to standards established for such slopes. Pier construction by the Tribe will be typical pile-pier construction and not fill-type construction. Slopes under the piers in the range of -10 to +8 will be no steeper than 2 horizontal to 1 vertical.

(2) Habitat Replacement - Natural and Artificial Stock. To the extent that, in the future, the Puyallup system is not managed by the Puyallup Tribe for natural stocks, the parties and the arbitrator may take that fact into account in determining the importance of habitat replacement where the use of such habitat is different for artificial stocks than for natural stocks.

(3) Fishing Activity and Access. If the Tribe, as part of this procedure, alleges that a proposed project will interfere with or obstruct the usual and

accustomed fishing activities of its members, including access to usual and accustomed fishing grounds, that issue, unless resolved in this Agreement or mutually resolved to the satisfaction of the Tribe and the developer, shall be submitted to the prescribed mediation and arbitration process, if necessary. The standard for resolving disputes is that a proposed project will not unreasonably obstruct or interfere with the usual and accustomed fishing activities of the Tribe or its members, and will not unreasonably interfere with access to the Tribe's usual and accustomed fishing grounds.

In determining whether there is unreasonable interference with the fishing activities or access to the Tribe's usual and accustomed fishing grounds, other sources of access shall be considered.

g. Federal Court Jurisdiction. Subject to the exhaustion of the procedures specified in Section D of this document, all parties hereto consent to suit in the Federal District Court for the Western District of Washington, Southern Division, for actions seeking to enforce (but not review the merits of) decisions of mediators/arbitrators, as well as development plan obligations and dispute resolution procedures. All governmental parties to this document, including the Puyallup Indian Tribe, agree to a limited waiver of their sovereign immunity from suit, if any, to the extent of the consent expressed herein. That waiver of sovereign immunity and consent to jurisdiction is limited to the following forms of relief: specific performance, or, if the court determines that specific performance is not feasible, a remedy specified by the court which will provide a benefit equivalent to that which was contemplated by the parties with respect to any required performance hereunder.

Summary of Time Periods  
Set Forth in Section D.

<u>Action</u>	<u>Time Period</u> (Calendar Days)	<u>Following</u>
Tribe-developer agency review	15-28	Letter proposing a meeting
Joint party review	30	Notice to Tribe
Tribal acceptance, objection, or request for further studies	45	Notice to Tribe
Negotiations-need for studies/study entity	5	Request for studies
Mediator/arbitrator nomination-response	10	Receipt of
Mediation-need for studies/binding decision	15	Availability of mediator
Tribal acceptance or objection to development plan	15	Decision of mediator-No studies needed
Tribal acceptance or objection to development plan	15+15	Completion of studies, ordered by mediator or otherwise
Negotiation of plan disputes	15	Tribe's objections
Mediation of plan disputes	15	Availability of mediator
Arbitration hearing	20-30	Selection of arbitrator
Decision	20	Hearing or briefs

DOCUMENT 5:  
JOB TRAINING & PLACEMENT PROGRAM;  
SOCIAL & HEALTH SERVICE IMPROVEMENTS

---

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document describes the establishment of programs for job training and placement, and social and health service improvements.

A. JOB TRAINING & DEVELOPMENT

To address the long term employment and training needs of the Tribe, the Washington State Employment Security Department, Bates Vocational/Technical Institute and the Tribal Job Training Partnership Act (JTPA) Office will cooperatively administer a comprehensive program designed to serve 265 Tribal members over a four year period beginning no later than 24 months after the effective date of the Agreement. The program will be administered under the guidance of a steering committee composed of representatives from the Tribe, Employment Security Department, Bates Vocational/Technical Institute, Tacoma-Pierce County Private Industry Council, Commencement Bay Tideland Owners Committee and private employers providing jobs to the Tribe under Section V. of the Agreement.

Services provided by this Agreement will include the following major program components: pre-employment training classes, basic skills remediation, job search workshops, on-the-job training, vocational training, and technical assistance for development of Tribal industries. In addition to the services listed above, this program will:

1. Provide counseling to employers and to employees placed through this program, where needed;
2. Maintain records of the job positions filled, the identities of the Tribal members hired, the number of hours worked, and other matters related to this program;
3. Maintain a list of employers who are participating in this program and complying with the requirements of this document;
4. Determine whether the employment goal is being met, using the standards set forth in Section B. of this document; and

5. Attempt to resolve concerns, problems, and disputes which may arise under this program.

The total value of this job training and development program is \$937,000. This amount includes the one-year training program developed under the Terminal 3 agreement between the Port of Tacoma and the Tribe that is valued at \$133,000.

The elements of the program and detailed implementation provisions are:

1. Pre-Employment Training Classes

All program participants will initially be enrolled in a six week pre-employment training class conducted each quarter, valued at \$160,000. The Tribe will assist in the recruitment of Tribal members for the class (up to 265 participants). The instructor for this class will be provided by Bates Vocational/ Technical Institute on a quarterly basis provided at least 12, but no more than 15, Tribal members enroll into the program in a given quarter. This course is custom designed to overcome the unique barriers to employment faced by Tribal members prior to entry into the labor market. These classes include instruction in the following areas: Self-esteem and confidence building, budgeting, interest and aptitude test analysis and interpretation, career planning, self-employment, job-seeking and jobkeeping skills, retaining a job, dressing for the job, dealing with rejection and failure, dealing with success, obstacles to employment, cross cultural sensitivity, and balancing work and family.

2. Basic Skills Remediation

At the time of enrollment in the pre-employment class, all participants will be assessed for reading and math skill levels. Those found to be functioning below minimum requirements for the local market will be encouraged to enroll into a competency-based basic skill remediation program which will operate 15 hours per week, up to the value of \$60,000 for staffing support. Participants will continue to receive individualized instruction until minimum standards are achieved (estimated at 25 students per year for four years).

3. Job Search Workshops and On-the-Job Training

Following the pre-employment classes, participants will attend a three day job search strategy workshop valued at \$32,000. The workshops will be offered quarterly by the Employment Security Department at the Tacoma Job Service Center. The workshop is designed to meet the special needs of Tribal members entering the labor market. Each

participant will receive assistance from the workshop instructor for placement in on-the-job training (60 participants) or direct placement in unsubsidized employment (30 participants). The on-the-job training portion of the program is valued at \$260,000. An Employment Security Account Executive (AE) will work with the workshop instructor to match eligible clients to identified job openings. The AE will work closely with private businesses in the community that agree to provide 115 private sector jobs for Tribal members. The Employment Security Department will be responsible for placement of program enrollees in the jobs provided by the private sector.

#### 4. Vocational Training

For some participants completing the pre-employment classes, vocational training may be a more appropriate option than job search. Referrals will be made for an estimated 75 participants for occupational skill training with local educational agencies. Occupational skill training offered under this portion of the program is valued at \$200,000.

#### 5. Support Services and Follow-up

All participants are eligible to receive up to \$50 per week while participating in the pre-employment training classes. Payments are only made for hours in attendance. Other support services to be provided when needed to assure full participation in program activities or employment include child care, emergency housing, transportation, tools, food, and clothing. The value of these support services is \$140,000. Follow-up counseling will occur for at least one year after placement in employment or training. Counseling will be provided as necessary to resolve problems on the job, in order to assure long term job retention.

#### 6. Technical Assistance

One professional staff person will be made available for a nine-month period beginning not later than 12 months after the effective date of the Agreement, to assist the Tribe in the development of potential business ventures. The value of this technical assistance is \$35,000. Ideas for business ventures previously considered include a freeze facility and a chassis manufacturing operation. In addition, a job skills training program valued at \$50,000 will be offered for up to 25 Tribal members to meet the specific occupational training needs for such a venture.

## 7. Implementation

In order to effectuate this job training and development program, the Tribe will provide sufficient office and classroom space for operation of the pre-employment and basic skills classes for the four-year period. The Tribe will also provide adequate telephone service and access to normal office equipment for two staff persons, and shall coordinate services provided under this program with services otherwise provided by the Tribe's JTPA office;

## 8. Audit

The Tribe shall have the right to verify amounts expended under the job training and development program.

## 9. Training for Hatchery Operations

The State Departments of Fisheries and Wildlife agree to work with the Tribe and the Department of Employment Security to provide training to at least four Trial members in the operations of fish hatcheries. Such training will be provided as a part of the State's commitment for job training in Section V. of the Agreement. This training will be provided within two years of the effective date of this Agreement.

## B. PRIVATE SECTOR JOBS

1. A job placement program ("Jobs Program") will be implemented by the Employment Security Department in cooperation with the Tribe to provide for placement of Tribal members in jobs to match the member's skill and training. 115 jobs for Tribal members valued at \$2,500,000 will be provided by private businesses in the community with placement through the Employment Security Department. In addition, the private sector will provide a coordinator for implementation of this commitment, at a cost of \$100,000.

### a. Administration

The program will be jointly administered by the Employment Security Department (hereafter "Department"), the Tribal Employment Office (hereafter "Office"), and the Commencement Bay Tideland Owners Committee (hereafter "Committee"). The Employment Security Department Account Executive (hereafter "AE") and the Commencement Bay Tideland Owners Committee Employers Committee Administrator (hereafter "ECA") shall meet regularly to discuss appropriate job positions to be made available under this program to qualified Tribal members. The AE shall coordinate job referral efforts with the

preemployment training class instructor, the job search workshop instructor, the Tribe's JTPA office staff, and participants completing the job training and placement program described in Section I. The Tribal Employment Office Director (hereafter ~TEODn) shall provide to the AE on a regular basis a list of qualified Tribal members who meet minimum qualification standards for positions made available by the ECA.

The responsibility for providing these 115 jobs is placed solely on the private businesses in the community. The Department shall not be held responsible for providing jobs. The Department will assist the Tribe and the Committee by assuring that eligible Tribal members are referred to jobs made available by private businesses in the community.

2. Program Guidelines

a. The term "Tribal members" as used in this document shall include Tribal members and non-member spouses. It is the intent of this program to develop full-time jobs. There will be an enforceable two-year commitment for a minimum of 2,000 hours for each job, subject to qualified Tribal members utilizing the program and applying for the jobs.

b. The following guidelines will be used to determine whether the goal of 115 jobs is being met:

(1) The extent to which the Jobs Program is referring a sufficient number of applicants who meet the employers' minimum qualification standards for the positions, on a job-by-job basis;

(2) The extent to which the employers are providing job openings for which Tribal members have the necessary skills and experience;

(3) The extent to which employers are employing qualified applicants referred by the Jobs Program for job openings.

(4) The extent to which Tribal members have obtained employment through other channels, such as other special employment programs, Tribal enterprises, and Tribal member businesses;

(5) The extent to which Tribal members who have obtained jobs through this program continue to hold those positions.

c. At the end of the two-year commitment period specified above, the parties participating in this program will evaluate the jobs program and discuss whether to continue the program in its current or modified form.

d. Notwithstanding the limitations in this document, the Committee shall provide job openings which represent a fair cross-section of the job market and provide Tribal members the opportunity to earn, on average, wages and salaries roughly commensurate with the job market as a whole.

3. Program Operation

a. The Tribe agrees that a Tribal member (or a spouse of a Tribal member) must meet the following conditions to be considered eligible to participate in the Jobs Program:

(1) The member must be certified as an enrolled member of the Puyallup Indian Tribe (or spouse of an enrolled member of the Tribe);

(2) The member (or spouse) must possess the minimum experience and skill qualifications established by the employer for the specific job opportunity;

(3) The member (or spouse) must meet the employer's established terms and conditions of employment; and

(4) The member (or spouse) must meet the employer's established specific standards for satisfactory job performance and progress.

b. The parties agree that job openings will be referred and Tribal members will be hired in accordance with the following terms and conditions:

(1) Each employer agrees to refer all available job openings to the AE with a written statement of the minimum skills, qualifications and abilities required for each job opening.

(2) Job openings filled from within by current employees, and job openings filled by former employees with seniority recall rights, and job openings which must be filled exclusively through a union hiring hall, will not be considered as job openings for purposes of the Jobs Program. In addition, with the mutual written agreement of the employer and the Jobs Program, other types of categories of job positions may be excluded from

consideration in the jobs program under this document.

(3) Upon receiving notice of a job opening, the AE will screen the lists of available candidates provided by the TEOD, the pre-employment class instructor, the job search workshop instructor and the Tribe's JTPA office staff. If qualified individuals are available, the Jobs Program will arrange for job application interviews.

(4) If an employer decides not to hire an applicant referred by the AK, the reasons for not hiring will be discussed on a confidential basis with the Office counselor in order to enhance the applicant's potential for employment in a subsequent position.

(5) Tribal members (or spouses) placed by this program will have the same employee rights and benefits as they would have if they were hired apart from this program. Tribal members hired under this program shall not be discriminated against in the terms and conditions of employment.

c. The employers participating in the Jobs Program agree:

(1) To provide at least 2,000 hours of employment per job position pledged. Each job position pledge will be fulfilled after 2,000 hours of paid employment have been credited to that position. A Tribal member who has worked 2,000 hours shall not be terminated, however, except for good cause.

(2) For each Tribal member hired, there will be a 60 day trial period. If the member leaves the position, either voluntarily or involuntarily, the number of hours worked by that employee shall be subtracted from the 2,000 hours guaranteed. However, the private sector shall remain obligated to provide the remaining hours.

(3) If, after that 60 day period, a Tribal member placed by this program leaves the position without cause or is terminated for cause, the private sector's obligation to provide that job position shall be deemed fulfilled. Before terminating an employee for cause, an employer must first seek counseling from the Jobs Program.

(4) If, after the 60 day period, a Tribal member placed by this program leaves the position with cause

or is terminated without cause, the number of hours worked by that employee shall be subtracted from the 2,000 hours guaranteed, but the private sector shall remain obligated to provide the remaining hours for that position. In order to satisfy the requirement for leaving with cause under this paragraph, the employee must first seek counseling from the Office.

(5) Hours worked by any Tribal member hired under the Interim Jobs Program of 1986 shall be counted toward the hours obligated under this Agreement.

(6) Where jobs are provided through the development of new business with the Tribe, the parties to this document, together with the non-Indian parties involved in such new businesses, shall agree whether such jobs shall be counted toward the fulfillment of the employment goal.

#### 4. Enforcement

Subject to the qualifications contained in this document, failure to meet the employment goal shall constitute a violation of the Agreement which shall be remedied as provided in that Agreement and/or as specified in this document. The Commencement Bay Tideland Owners Committee will assume responsibility to obtain sufficient job opportunities to meet the goals of Section V.B. of the Agreement and section B.1. of this document within 24 months of the effective date of this Agreement.

#### C. SOCIAL & HEALTH SERVICE IMPROVEMENTS

A. The following funds will be provided for the capital purposes set forth below:

##### CAPITAL PROJECTS

20 Bed Elder Care Facility	\$500,000
20 Bed Youth Substance Abuse Facility	\$500,000
42 Child Day Care Center	\$250,000
Mental Health Center Computer	<u>\$5,000</u>
 TOTAL CAPITAL FUNDS	 \$1,255,000

##### Capital Projects Explanation

The Department will provide \$1,255,000 for construction and equipment costs associated with the four projects noted above. Funds will be disbursed coincident with the construction schedule of the projects and must be used or committed within 24 months of the effective date of the

Agreement. The Department will not purchase, donate or supply land for the facilities. The amounts shown are for construction and equipment. Responsibility for ownership, operation and staffing rests solely with the Tribe. The estimated amounts are sufficient to build and equip these facilities, to safely meet building code standards and appropriate care as reflected in State licensure provisions. Expenditures above the pledged amounts will be borne by the Tribe.

The size of the day care center reflects perceived needs and State licensure provisions. A forty-two child facility can handle eight infants (staff ratio at 4:1), 14 toddlers (staff ratio at 7:1) and 20 preschoolers (staff ratio at 10:1). A full staff includes seven day care teachers and one administrator in order to staff the facility for a ten to twelve hour day.

The computer is intended to permit the existing Tribal mental health services to tie into the State mental health computer systems, and may additionally be used for other Tribal purposes.

2. The following funds will be provided for the training purposes set forth below:

#### TRAINING TRUST FUND

Qualified Alcoholism Counselor Training	\$10,000
Day Care Training	\$20,000
Child Welfare Training	\$65,000
Mental Health Training	\$22,000
Social Service Management Training	<u>\$10,000</u>
 TOTAL TRAINING FUNDS	 \$127,000
 TOTAL ALL FUNDS	 \$1,382,000

#### Training Trust Fund Explanation

The State will provide \$127,000 to fund training, based on the expected cost over five years. Where possible, training will be provided to Tribal employees in DSHS training programs. Tribal employees (through the trust fund) will be charged no more than the rate charged DSHS employees. Where DSHS does not provide training, the amount is anticipated to be sufficient to purchase training from state, college or private programs open to the general public. This money shall be held in a trust account, with the principal and income from the fund to be used for the training described below.

a. Qualified Alcoholism Counselor Training - \$10,000 will be provided to pay for the required 30 hour per year continuing education classes at \$10 per hour for five people over a five year period ( $30 \times \$10 \times 5 \times 5 = \$7,500$ ). The remaining \$2,500 is available for additional training.

b. Day Care Training - \$20,000 will be provided to pay tuition for 15 employees to attend community college to become Certified Day Care teachers. The cost is \$24 per credit and 45 credits are needed ( $15 \times \$24 \times 45 = \$16,200$ ). This assumes seven employees will attend college in the first year and two more employees will attend college each of the following four years. The remaining \$3,800 is available for additional training.

c. Child Welfare Training - \$65,000 will be provided to pay for 13 people to attend the DSHS Children's Academy six week training program at \$4,000 each ( $13 \times \$4,000 = \$52,000$ ). This assumes five people will attend the first year and two more each year for the remaining four years. The remaining \$13,000 is available for additional training. Additional training could be purchased from DSHS on a space available basis or from other sources.

d. Mental Health Training - \$22,000 will provide computer training (\$2,000 over five years) and forty hours per year of professional continuing education at \$20 per hour for five people ( $40 \times \$20 \times 5 \times 5 = \$20,000$ ). Some of the required training is available from DSHS.

e. Social Service Management Training - \$10,000 will provide training in social services management at 20 days of training per year, at \$100 per day for 5 years.

DOCUMENT 6:  
BLAIR NAVIGATION PROJECT

---

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document describes the manner in which the Blair Navigation Project will be accomplished.

A. PROJECT DESCRIPTION

1. History

The evaluation of national benefits that could be realized from deepening and widening of the Blair Waterway was originally undertaken in the mid-1970's. It was reported to Congress after completion of feasibility studies that this plan was in the best interests of both the United States and the local community, as a vital improvement to our maritime capacity to meet domestic and foreign trade objectives. This conclusion was confirmed in the early 1980's, with continuous funding being provided to complete preliminary engineering studies of the East 11th Street Blair Bridge replacement for the purpose of widening the navigation passage.

The project which is formally identified as the Blair-Sitcum Federal Water Resources Project was subsequently authorized by Congress in PL 99-662, the 1986 Federal Water Resources Act. As authorized, the legislation allows for the bridge to be replaced by a by-pass road. However, funding for final studies, detailed design and construction has not been provided.

2. Physical Features

The project consists of dredging the Blair Waterway channel, and either replacement or permanent removal of the East 11th Street bridge, to widen and deepen the channel from its mouth at Commencement Bay to the turning basin at its head. No further deepening of the Sitcum waterway is contemplated.

The channel dredging will increase the current water depths of about -40 feet MLLW to -45 feet MLLW to Lincoln Avenue, and to -41 feet MLLW to the turning basin. Actual dredging will include an additional 1 foot of advance maintenance dredging and a 2 foot contractor's allowance, both of which are accepted dredging project standards. Channel widths will be increased relative to the deepening, but existing banks and nearby slopes of the waterway will not be altered. A

primary channel widening will occur at the East 11th Street bridge, where it will be increased from 150 feet to 300 feet.

A key element of the project is the widening of the navigation opening at the East 11th Street bridge. As prescribed in the authorized federal project, the existing bridge will be demolished and either replaced by a new bridge allowing a 300 foot wide navigation opening, or left unreplaced in favor of a bypass highway to be constructed around the waterway. If the bypass highway is chosen, the estimated cost of bridge construction, less demolition and utilities relocation costs, would be transferred to the bypass highway project. This decision for replacement of the bridge or a bypass road will be made jointly by the Port of Tacoma, City of Tacoma and the State of Washington.

Another element of the Blair Project is provision of a dredged material placement site. That designated site is the Milwaukee Waterway, making it an indirect part of the Blair Project.

A final element of the project is long term maintenance of the new channel widths and depths. Included is occasional maintenance dredging and disposal of sediment accumulations in both the Blair and Sitzum Waterways. The Sitzum Waterway is included in the project for maintenance only, as its prescribed depth is already in place.

### 3. Project Costs

Estimated costs are:

<u>Dredging and Disposal</u>	<u>Estimated Cost</u>
Environmental, Mitigation, Engineering and Administration; Dredging and Material Placement (including a contingency fund)	\$10,000,000*
<u>Bridge</u>	
All elements (including a contingency fund)	\$41,000,000
<u>Total Project</u>	\$51,000,000

\*The actual costs will be approximately \$13 million.

The additional \$3 million will be paid by the Port of Tacoma.

### B. PROJECT FUNDING

The parties to this Agreement agree that the common benefit of this project to the United States, Tribe, non-Indian entities and

the entire community warrants its inclusion in this Agreement. Accomplishment of the project will be as prescribed in the following schedule of funding and in-kind work:

1. Dredging and Disposal

The Port of Tacoma will fund and accomplish all of the project dredging and dredge material placement as an in-kind contribution to this Agreement. Although the total estimated value of that work is \$13,000, 000, the Port will limit its contribution credit to \$10,000,000 for purposes of this Agreement.

2. Bridge Replacement or Bypass Funding

Cash funding from this Agreement in the amount of \$41,000,000 will be placed into an appropriately established escrow account in the control of the Washington State Department of Transportation, with the precise limitation of its use for accomplishment of the bridge removal and replacement of the bridge or as a part of the bypass road project. The proper use of these funds will be monitored by the U.S. Army Corps of Engineers or other appropriate federal agency for the federal government.

C. ACCOMPLISHMENT OF THE PROJECT

All dredging and disposal will be completed by the Port of Tacoma using their own funds. Demolition of the East 11th Street bridge and utility relocations will be completed by the Washington State Department of Transportation using the funds from this Agreement held in escrow. Replacement of the East 11th Street bridge, including all elements, if the chosen option, will be performed by the Washington State Department of Transportation using the funds held in escrow from this Agreement. A bypass road project or portion thereof, if the chosen option, will be constructed by the Washington State Department of Transportation using the funds held in escrow from this Agreement.

D. TRIBAL INCENTIVES

It is recognized by the Tribe that this project represents a broad, positive value to the community, including Tribal and Non-Indian interests. More specifically, Tribal interests are met in the following ways:

1. Blair Waterway and Blair Backup Properties

Simultaneous with the "unlocking" of all other lands along the Blair Waterway, these valuable waterfront and maritime support lands conveyed to the Tribe will become part of the most desirable port development area on the West Coast. The

deepening of the waterway and widening of the navigation opening at the East 11th Street Bridge site will provide the channel with appropriate depths and widths to accommodate the largest container and general cargo vessels anticipated by the maritime industry for the foreseeable future.

## 2. Long Term Annual Participation Payments

As a recognition of Tribal participation in the Blair Navigation Project and for the Tribe's assistance to the Port during the process of permit issuance for developments undertaken by the Port during and after the project construction, the Port shall provide long term annual payments to the Tribe which they can use for economic development, including development of their own facilities on the Blair Waterway. These payments will be provided over a 20 year period starting upon the date of completion. The project elements and payment schedule will be:

### Blair Waterway East 11th Street Bridge Navigation Opening

Participatory payments will begin upon completion of replacement of the existing bridge with a 300 feet wide navigation opening, or upon completion of permanent removal of the existing bridge as part of a permanent bypass solution. They will continue annually at one year intervals thereafter through the 20th year.

<u>Upon Project Completion</u>	<u>Years 2 to 5</u>	<u>Years 6 to 10</u>	<u>Years 11 to 15</u>	<u>Years 16 to 20</u>
\$50,000	\$50,000 per year	\$100,000 per year	\$150,000 per year	\$200,000 per year

Total payments to Tribe over the 20 year period = \$2,500,000.

## E. BYPASS ROAD RIGHT-OF-WAY

Construction of the bypass road element of this project requires that an elevated bridge be placed over the Puyallup River and a portion of the Tribal-owned land along the Puyallup River. It is agreed that the Tribe will provide land in fee for construction of bridge supports and their foundations and easements for the overhead crossing of the bridge structure. The Tribe will be paid just compensation for the conveyances in fee for the supports and their foundations and the easement for the elevated structure. Use and necessity is recognized by the Tribe and necessary progress of construction will not be delayed by the Tribe while just compensation is determined. The Tribe shall

have a reversionary interest in the land occupied by the footings if such lands are no longer used for transportation purposes.

It is further agreed that the bridge to be constructed over Tribal lands will be designed within the following criteria:

1. Crossing of the Puyallup River will be downstream from and no closer than 300 feet from the railroad bridge downstream from the Highway 99 Bridge.
2. The required bridge right-of-way will be no greater than 150 feet normal to centerline of bridge.
3. The bridge will be elevated over Tribal lands, i.e., not requiring filling over Tribal lands.
4. Support columns and their foundations placed on Tribal lands will be accomplished such that the land remains accessible for their fishermen under the bridge.
5. If piers for bridge support are found to be necessary within the river, no more than two lines of supports will be constructed; such supports shall be constructed parallel to the River bank. Every reasonable effort will be made during design to locate each line of supports as near as possible to banks, thereby maximizing the opening between supports; with one support no more than 25 feet from the east bank, and the span between supports no less than 300 feet.

DOCUMENT 7:

FUTURE GOVERNMENTAL AUTHORITY, RESPONSIBILITIES, AND COOPERATION

INTRODUCTION

This document accompanies and is an integral part of the Agreement. This document contains the agreement among the Tribe, Pierce County, the cities of Puyallup, Fife, and Tacoma, the State of Washington, and the United States pertaining to factors for land use decision-making within the 1873 Survey Area; a procedure for consultation regarding proposed land use actions and resolving potential future land use and development conflicts, including future trust lands or changes in use of current trust lands; and law enforcement cooperation. If there is any conflict between this document and the Agreement, the Agreement controls.

A. SCOPE

1. Area

The consultation process applies to and is required of participating parties within the 1873 Survey Area as described in Section VIII of the Agreement. The consultation process also applies to any land proposed for future trust status or change in use on trust property.

2. Parties

The parties to this document are the Puyallup Indian Tribe, Pierce County, the cities of Fife, Puyallup, and Tacoma, the State of Washington, and the United States. The parties agree to apply the factors for land use decision-making, utilize the consultation process, and enter into service agreements.

3. Periodic Review

The parties agree to conduct a formal review of this document every five years, or more frequently as needed, and to engage in good faith negotiations in the event amendments are desired by any party. This document shall remain in full force unless the parties agree in writing to amendments as part of the good faith negotiations.

B. LAND USE PLANNING AND REGULATORY DECISIONS

1. Preamble

The parties to this document agree to consult and discuss all development and revisions to their respective land use plans.

In developing these plans and resolving future problems, the Tribe and general purpose local governments (i.e., cities and county) agree to use the standards described below and intergovernmental compacts in resolving their differences.

The Tribe and the general purpose local governments agree to use the consultation process described in Section C. of this document as the procedure for resolving any differences or concerns over proposed plans or plan changes within the 1873 Survey Area.

Before the Tribe or its members files any trust land applications in the future, or authorizes a substantial change in use of land in trust under Section VIII of the Agreement, the Tribe will use the consultation process set forth in Section C. of this document, to allow other governments to raise concerns.

The Tribe agrees to develop a comprehensive land use plan of its own within a reasonable period of time after the effective date of this Agreement. The Tribe may adopt by reference the appropriate local government land use plans. The Tribe's land use plan shall address all or a part of the 1873 Survey Area, consistent with Section VIII.A. of the Agreement. The Tribe agrees not to assert the jurisdiction of its plan or land use regulations over non-trust lands.

2. Guidelines for Evaluating Land Use Decisions

Land use planning and land use regulatory decisions made by the Tribe, Pierce County, the cities of Fife, Puyallup, and Tacoma, the State of Washington, and the United States affecting any property within the 1873 Survey Area, as described in Section VIII. of the Agreement, will be made only after consideration of community interests, both Indian and non-Indian. When adopting or amending land use plans or regulations within the 1873 Survey Area, the parties will utilize the land use factors set forth below to guide their review and deliberations, and each government will give careful consideration to and will accommodate as many of the listed factors as possible.

It is recognized by the parties that, in evaluating and acting upon permit applications within their jurisdiction, each party is required to follow applicable laws, including

land use plans and regulations. Each party will in addition to their adopted land use plans, programs, and regulations give consideration to the following land use guidelines and will accommodate as many of the listed factors as possible. However, the land use factors set forth below shall only be additional considerations to the provisions of the applicable land use plans and regulations, and shall not supersede or otherwise replace the provisions of such plans or regulations. The factors to be considered are:

- a. The need of the Tribe and its members for increased land;
- b. The objectives of federal Indian policy;
- c. The protection of established or planned residential areas from uses or developments which would adversely affect such residential areas. ("Planned areas, development, or uses," as utilized in this factor and following factors, shall mean areas, developments, or uses provided for or permitted under adopted land use plans, zoning regulations, land use programs, or other official actions of any participating government.);
- d. Protection of the health, safety, and welfare of the community;
- e. Preservation of open spaces, which are publicly owned and/or officially designated and whose intended purpose is clearly for open space. Also, the protection of rivers, streams, and marine waters, including their ability to support the fisheries resource;
- f. Protection of the physical environment from adverse impacts;
- g. Opportunity for economic growth and diversity, consistent with the other factors set forth herein; and in the location of Indian economic enterprises, the extent of the Tribe's economic base and land base to support economic activities;
- h. Provisions for providing public facilities and services necessary to support development, such as utilities, roads, public transportation, parks, recreation facilities, and schools;
- i. Avoidance of adverse effects on existing and planned development and uses on adjacent lands and within surrounding neighborhoods;

j. Concern that land may be put into trust for the primary purpose of allowing non-Indian businesses to avoid state and local taxation, or where the Tribe receives no significant immediate benefits from the transaction;

k. Of particular importance to the local governments who are parties to this Agreement in evaluating a proposed change from fee to trust status is the impact resulting from the removal of the land from the local government tax rolls. The local governments and the Tribe will address their concerns about the appropriate division of lands between trust and non-trust status and between Tribal and local governmental tax rolls. If these issues cannot be resolved through later negotiations, then the local governments reserve the right to object to proposed impacts of individual parcels or the aggregate impacts of the total amount of land placed in the trust status, pursuant to 25 CFR 151 or its successor.

In acting upon a proposal, each party shall take into consideration the other's adopted land use plans and regulations, and, further, each party reserves the right to use its land use plan and regulations when it applies the above guidelines to a proposal or when reviewing and commenting upon a proposal pursuant to the consultation process set forth in Section C. of this document.

C. CONSULTATION FOR SUBSTANTIAL ACTIONS CONCERNING TRUST AND NON-TRUST LANDS

1. Preamble

When the Tribe or any general purpose local government which is a party to this document receives an application for a permit which is defined as a "substantial action" in subsection 2.b. of this section, or itself proposes to take a "substantial action" as herein defined concerning property located within the 1873 Survey Area, the issuing government agency will notify the other affected government and give an opportunity for consultation and discussion.

2. Definitions

a. General purpose local governments participating in this Agreement are Pierce County and the cities of Fife, Puyallup, and Tacoma.

b. A "substantial action" is any regulatory action requiring a public hearing such as a rezone, shoreline permit, or special or conditional use permit, or subdivision, a legislative action such as the adoption of

land use plans or amendments thereto, and certain environmental review actions such as environmental impact statements related to any of the preceding regulatory or legislative actions, and proposed declarations of non-significance pursuant to the State Environmental Policy Act (SEPA) Rules (WAC 197- 11340(2), as adopted and in effect at the time of the execution of the document. Also, any similar land use or environmental actions to those noted above and any substantial change in use of trust or non-trust lands shall constitute a "substantial action. In Further, any proposal to place lands in trust shall constitute a "substantial action."

Administrative and ministerial actions which are nondiscretionary in nature and which may not require a public hearing, such as administrative site plan reviews, temporary use permits, building permits, occupancy permits, enforcement orders, or short plats are not to be considered "substantial actions" for the purposes of the consultation process set forth herein.

3. Procedures

a. The Tribe or general purpose local government which receives an application for or intends to take a "substantial action," as defined in paragraph 2.b. above, within the 1873 Survey Area will give timely notice to the other party in writing and will transmit a summary of the request, a copy of the project plans, any environmental documents, and any other pertinent information filed in conjunction with the application.

b. The Tribe or the general purpose local government, taking or responsible for approving the "substantial action," will provide an opportunity for written and/or oral comment by the other party, consistent with established land use permit and environmental review procedures. The Tribe and local government will make available appropriate representatives to discuss any concerns or questions raised by the other entity.

c. The Tribe or the general purpose local government will make good faith efforts to accommodate the concerns of the other party in rendering its decision, consistent with the adopted plans, programs, and legal standards governing the decision. In each case where an objection is filed and this consultation process is invoked, the decision-maker will enter a decision in writing setting forth the reasons for the decision and explaining the evaluation of all relevant factors.

d. To the extent a decision is adverse to an objecting entity, the decision-maker will explain in the decision why an adverse decision was necessary and will set forth any restrictions or conditions intended to minimize the adverse impact on the objecting entity.

e. The local governments have no duty to provide services to trust lands unless the Tribe or its members request such services, and there is a mutually satisfactory agreement regarding payment for such services.

f. As provided in Section VIII.B. of the Agreement for the future placement of lands in trust and/or changes in the use of existing trust lands, the Secretary of Interior shall comply with applicable federal law, regulations and procedures.

The Tribe shall notify the other parties of the decision of the Secretary as to requests for the acquisition of land in trust status.

This document does not limit whatever jurisdiction the appropriate court would otherwise have to review the merits of a decision in cases filed pursuant to Section XI. of the Agreement. Further, the parties retain whatever authority they would otherwise have to bring suit in Federal court to remedy violations of Federal law which are independent of this document. In addition, the parties retain whatever authority they would otherwise have to file suit in the State, local or Tribal courts to remedy violations of State, local or Tribal law.

Proposals that are subject to the fisheries dispute resolution procedure set forth in Document 4 to the Agreement shall not be subject to the consultation process set forth herein.

On the fifth (5th) year following the effective date of this Agreement the participating local governments and the Tribe shall review how the system for placing new lands in trust has worked. To the extent that any party determines the system is not working, it will suggest changes and attempt to reach agreement with the other parties. The Tribe and the local governments reserve the right to propose changes in the federal process for placing lands in trust, in the event there is no agreement.

D. LAW ENFORCEMENT

In order to exercise the highest degree of cooperation, the Puyallup Indian Tribe and the State and its political subdivisions, through their respective law enforcement authorities, agree to the following program:

1. The Puyallup Tribal police will be primarily responsible for law enforcement over Tribal members on trust lands in the 1873 Survey area. Local and state police agencies shall be primarily responsible for law enforcement over non-Tribal members and on non-trust lands, as presently provided by law.
2. Each jurisdiction is responsible for its own criminal investigations, pursuit of alleged criminals, and arrests, and for all liability or damage arising from incidents or actions involving its officers, whether or not the authority being exercised is that of the employing jurisdiction or of other jurisdictions under deputization. The employing jurisdiction will hold harmless other jurisdictions whose authority is being exercised by officer.
3. All parties agree to minimize jurisdictional disputes by formal and informal consultation on matters of mutual interest. Specific jurisdictional problems shall be the subject of continuing and regular consultations.
4. When investigations, hot pursuit, or potential arrests might involve a jurisdictional dispute, police activities shall be guided by the following:
  - (a) When the criminal investigation, pursuit, or potential arrest is not time-sensitive, the involved police agency shall consult with the appropriate other police agencies in order to determine which agency has jurisdiction, which court should arraign any suspect, and other matters; and
  - (b) When time is of the essence to stop a crime in progress, to prevent injury to person or damage to property, or to apprehend suspects, the police agency involved shall notify immediately the appropriate counterpart police agencies and shall take only such steps necessary to prevent injury or damage or to arrest criminal suspects.
5. Each jurisdiction may agree to limited, reciprocal cross-deputization of Tribal police and non-Indian police when necessary to carry out the law enforcement functions described herein.

Further, the various police agencies, the Puyallup Indian Tribe, and the local governments agree to facilitate participation of the respective police agencies in any local or Tribal training programs.

FINAL

**IMPLEMENTING AGREEMENT  
between the  
PORT OF TACOMA  
and the  
PUYALLUP TRIBE OF INDIANS**

---

1. Parties and Purpose. This Implementing Agreement between the PORT OF TACOMA ("Port") and the PUYALLUP TRIBE OF INDIANS ("Tribe"), and approved by the Secretary of the Interior pursuant to 25 U.S.C. 81, is made to set forth the manner, and the conditions for the conveyance of the six (6) parcels of land owned by the Port to be conveyed to the United States in trust for the Tribe pursuant to the Puyallup Settlement Agreement ("Settlement Agreement"), the Puyallup Tribe of Indians Settlement Act of 1989 (P.L. 101-41) ("Settlement Act") and the March 24, 1990 Supplemental Agreement between the Port and the Tribe ("Supplemental Agreement"). The effective date of this Implementing Agreement shall be determined in the manner provided by §12 below.

2. Delayed Settlement Properties. The Settlement Agreement requires that title to certain lands owned by the Port be conveyed to the United States in trust for the Tribe by March, 1993. Pursuant to the Supplemental Agreement, the deeds to the following lands have been placed in escrow and are to be conveyed to the Tribe under the Settlement Act, 25 USC §1773b(c). These lands (hereinafter collectively referred to as the "Delayed Settlement Properties") as defined by the Record of Survey include the following:

- 2.1 The Blair Waterway property, comprised of 43.61 acres;
- 2.2 The Blair Backup property, comprised of 85.18 acres;
- 2.3 The Inner Hylebos property, comprised of 72.61 acres;
- 2.4 The Upper Hylebos property, comprised of 5.86 acres;

2.5 The Taylor Way property, comprised of 5.77 acres; and

2.6 The East-West Road property, comprised of 1.82 acres.

3. Property Transfer and Addenda. The Supplemental Agreement describes the mechanism for transferring title to the Delayed Settlement Properties from escrow to the United States in trust for the Tribe. This Implementing Agreement addresses a number of matters of mutual interest to the parties under the Settlement Agreement and facilitates the transfer of the Delayed Settlement Properties.

3.1 The Parties intend to prepare and execute an addendum for each of the Delayed Settlement Properties which shall set forth specific conditions applicable to the transfer of that specific Delayed Settlement Property.

3.2 This Implementing Agreement shall only be applicable to those Delayed Settlement Properties which are also subject to a specific addendum.

3.3 Each such addendum shall be an amendment to this Implementing Agreement as provided by Section 14.1 below. Except as explicitly modified in this Implementing Agreement, the terms of the Settlement Agreement and the Supplemental Agreement shall remain in full force and effect.

4. Responsibility for Historic Contamination. Notwithstanding the Port's transfer of Delayed Settlement Properties to the United States in trust for the Tribe, and in accordance with the Settlement Agreement and Technical Documents incorporated therein, the Port shall continue to remain responsible for the cleanup and/or remediation of any contamination including all known or subsequently discovered contamination that remains on, in, under or about any of the Delayed Settlement Properties as of the date that title to such Delayed Settlement Property is conveyed to the United States in trust for the Tribe ("Historic Contamination").

4.1 Monitoring. The Port shall be responsible for all monitoring, testing or other ongoing or future requirements regarding Historic Contamination on, in, under or about a Delayed Settlement Property that either have been or may be in the future imposed by the United States Environmental Protection Agency ("EPA") by means of Administrative Order, Consent Decree or other means. All such requirements imposed by EPA are hereby incorporated into this Implementing Agreement and shall be enforceable as terms and conditions of this Implementing Agreement.

5. Indemnification. The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 shall as of the date of transfer of a Delayed Settlement Property to the United States in trust for the Tribe extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about any of the Delayed Settlement Properties.

5.1 Parties in Privity with the Tribe. The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to one or more of the Delayed Settlement Properties. Parties in Privity with the Tribe shall include but not be limited to the following categories of Parties who meet the above criteria of 5.1(a) and 5.1(b):

5.1.1 Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) one or more of the Delayed Settlement Properties;

5.1.2 Parties holding legal, contractual, or equitable interests in one or more of the Delayed Settlement Properties;

5.1.3 Parties who, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties, may be considered to be an owner or operator or otherwise be deemed a liable party with regard to one or more of the Delayed Settlement Properties as defined in either CERCLA (42 U.S.C. §9601 et seq.) or MTCA (Chapter 70. 105D RCW) as amended or other applicable contamination laws.

5.2 Recording Indemnification. The Port shall execute a document for each of the Delayed Settlement Properties entitled the "Memorandum of Port of Tacoma Indemnification for Historic Contamination Liability Pursuant to Settlement Act." This document shall provide notice of the Port's indemnification of Parties in Privity with the Tribe pursuant to Section 5 of this Implementing Agreement.

5.2.1 The Tribe shall promptly record this document with the appropriate governmental property title recording agencies.

5.2.2 A copy of this document is attached hereto as Exhibit A and is by this reference incorporated herein.

5.3 Notice of Party in Privity with the Tribe. The Port's obligation under Section 5 of this Implementing Agreement to indemnify Parties in Privity with the Tribe is subject to the Tribe providing the Port with written notice of the identity of the third party which the Tribe has determined to be a Party in Privity with the Tribe.

5.3.1 The Tribe shall provide such written notice to the Port within ninety (90) days of the execution of the contract or agreement establishing the relationship between the Tribe and a third party determined by the Tribe to be a Party in Privity with the Tribe.

5.3.2 The Tribe shall provide such notice to the Port in the form attached as Exhibit B and entitled "Notice to Port of Party in Privity with the Tribe." Exhibit B is by this reference incorporated herein.

5.4 Limitation of Indemnification. The Port's obligation to indemnify Parties in Privity with the Tribe under Section 5 of this Implementing Agreement is limited to liability that arises, or that may in the future arise, due to the presence of Historic Contamination on, in, under or about one or more of the Delayed Settlement Properties and as set forth in Section 5.4.1 below.

5.4.1 Post Transfer Releases. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe, does not extend to liability that arises as the result of a release of contamination (other than Historic Contamination) on, in, under or about a Delayed Settlement Property subsequent to the date that the Port transfers title to such Delayed Settlement Property to the United States in trust for the Tribe.

5.4.2 Violation of Use Restriction. The Port's duty to hold harmless, indemnify and defend Parties in Privity with the Tribe shall include activities taking place on a Delayed Settlement Property that cause the release of Historic Contamination, but does not extend to liability that arises as the result of a release of Historic Contamination where the Port can show that the activity of the Party in Privity with the Tribe caused the release, and that such activity is in violation of a restriction on the use of such Delayed Settlement Property imposed by EPA in an Administrative Order on

Consent or Consent Decree applicable to the specific Delayed Settlement Property in question.

5.5 Liquidated Damages. The Port's contractual obligation to Parties in Privity with the Tribe as provided for in this Section 5, is limited as set forth in Section C(11)(g) of Technical Document No. 1.

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses"). The Tribe's Restricted Uses may be modified to include additional commercial uses, provided that timely notice be given to the Port consistent with Section 8 below

7. Change in Use of Delayed Settlement Properties. At any time in the future, if the Tribe has a requirement for commercial use consistent with the surrounding uses that is not included in the uses permitted under Section 6 of this Implementing Agreement, or the specific Addendum for that Delayed Settlement Property, the Restricted Uses may be modified to include additional-commercial uses; provided that if the modification of the Restricted Uses is determined to permit uses of one or more of the Delayed Settlement Properties, for which it is determined that prior cleanup levels of Historic Contamination on, in, under or about the property are no longer deemed to be protective of human health and the environment, the Port shall promptly undertake additional cost-effective remedial activities as may be necessary and shall do so in a timely fashion so that such new or expanded use of the Delayed Settlement Property can occur. To the maximum extent possible, remedial activities will be undertaken in a manner to minimize disruption of the then current uses of the Delayed Settlement Property.

7.1 Coordination - Future Remedial Activities. Where Restricted Uses of Delayed Settlement Properties are modified, pursuant to Section C(12)(f) of Technical Document No. 1 and Section 7 of this Implementing Agreement, the Tribe will cooperate with the Port and shall incorporate reasonable construction and design requirements in its development plans to minimize the disturbance of Historic Contamination. The Port will take the lead in undertaking any required remedial activities.

7.2 Limitations on Present/Future Use. Except as specifically provided in Section 6 and Section 7, nothing in this Implementing Agreement shall limit the use of any Delayed Settlement Property by the Tribe or a Party in Privity with the Tribe.

8. Notice of Use and/or Physical Activity on Delayed Settlement Property. The Tribe shall provide the Port with timely written notice of use and/or activities that the Tribe or a Party in Privity with the Tribe plans to undertake on any Delayed Settlement Property and of material changes thereto.

8.1 The purpose of such notice is to facilitate consultation between the Port and the Tribe (and Parties in Privity with the Tribe) and to identify whether steps may need to be taken to avoid potential releases of Historic Contamination and to insure that the activity is consistent with the Restricted Uses set forth in Section 6.

8.2 The Tribe shall provide such notice to the Port by means of a form entitled "Notice of Use and/or Physical Activity." A copy of this form is attached hereto as Exhibit C and is by this reference incorporated herein.

9. Conditional Release of Claim for Economic Loss. Subject to and conditioned upon the Port's satisfactory progress toward the completion of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order, Consent Decree or other document, the Tribe shall refrain from the exercise of any claim for economic loss. Upon the Port's complete and satisfactory performance of its obligations with regard to a Delayed Settlement Property under both this Implementing Agreement and any applicable Administrative Order or Consent Decree, the Tribe shall release the Port from obligations to compensate the Tribe for its economic loss related to that specific Delayed Settlement Property, under Section C(11)(f) of Technical Document No. 1.

10. Notice. Where notice is to be provided pursuant to this Agreement, such notice must be in written form and delivered via messenger service or First Class Mail certified and return receipt requested to:

10.1 Tribe: The Director of Environmental Programs, The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404, and copy to the Director of Legal Offices, The Puyallup Tribe of Indians, 2002 East 28th Street, Tacoma, Washington 98404.

10.2 Port: Director of Environmental Affairs, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401, and copy

to the General Counsel, Port of Tacoma, P. O. Box 1837, Tacoma, Washington 98401.

11. Access. The Tribe shall upon written notice provide reasonable access to the Port as may be required by this Agreement or for the purpose of conducting such monitoring, site investigations or further removal or remedial activities as may be required pursuant to Administrative Order or Consent Decree.

12. EPA Authority. Nothing in this Implementing Agreement shall limit the authority of EPA under applicable law.

13. Effective Date. The effective date of this Agreement shall be the date upon which both parties have signed this Agreement and it has been approved by the Department of the Interior.

14. Amendment and Addenda. This Implementing Agreement may be modified by the written concurrence of the Port, the Tribe and the Department of the Interior. When signed by both parties, an addendum as described in Section 3 above, shall be an amendment to this Implementing Agreement upon approval by the Department of the Interior.

15. Execution. By their signatures set forth below the Parties agree to be bound to the terms and conditions set forth above.

PUYALLUP TRIBE OF INDIANS

DATE

Chair, Puyallup Tribal Council

PORT OF TACOMA

DATE

President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

EXHIBIT A  
FINAL

**MEMORANDUM OF PORT OF TACOMA  
INDEMNIFICATION FOR  
HISTORIC CONTAMINATION LIABILITY  
PURSUANT TO SETTLEMENT ACT**

**1. PURPOSE**

The purpose of this memorandum is to provide notice of the protection afforded to parties deemed to be in privity with the Puyallup Tribe of Indians ("Tribe") pursuant to federal law, as further implemented by means of an Implementing Agreement entered into between the Tribe and the Port of Tacoma ("Port"). The scope of such protection and the requisite relationship of the parties to the Tribe are described below.

**2. BACKGROUND**

2.1 The Property described in Exhibit 1 attached hereto (the "Property") is being or has been transferred to the Tribe under the Settlement Agreement authorized by the Puyallup Tribe of Indians Settlement Act, 25 U.S.C. § 1773, et seq. (1991) (collectively the "Settlement"). Section 1773b(b)(2) of the Settlement Act modifies the application of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., with regard to the Property, providing that "[t]he Tribe shall not be liable for the cleanup costs or in any manner for contamination on [the Property] except any contamination caused by the Tribe's activities after conveyance of [the Property] to the Tribe...."

2.2 Under the terms of Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, the Port agreed to "hold the Tribe harmless from, and to indemnify and defend the Tribe against any claim or liability which may be asserted by any private or public party due to the presence of hazardous materials, dangerous waste, or other pollution on [the Property]...." Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement defines the Port's maximum liability to the Tribe under the indemnification provision.

2.3 The Port has entered into an agreement with the Tribe ("Implementing Agreement"). The Implementing Agreement addresses the hold harmless, indemnification and defense provision set forth in Section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, subject to certain conditions and

limitations. A copy of the Implementing Agreement is attached hereto as Exhibit 2 and is by this reference incorporated herein.

### 3. INDEMNIFICATION PROVISION

3.1 The hold harmless, indemnification, and defense provisions contained in section C(11)(g) of Technical Document No. 1 to the Settlement Agreement, shall as of the date of transfer of the Property to the United States in trust for the Tribe extend to all Parties in Privity with the Tribe concerning the use, financing, control, management, construction, development, operation, cleanup, or any related activity on, in, under or about the Property.

3.1.1 The phrase "Parties in Privity with the Tribe" shall mean parties who: (a) did not cause or contribute to the pre-transfer release of Historic Contamination; and (b) have a derivative interest founded on or growing out of contract, connection, involvement, or mutuality of interest with the Tribe with regard to the Property.

3.1.2 Parties in Privity with the Tribe shall include but not be limited to the following categories of parties who meet the above criteria of 3.1.1(a) and 3.1.1(b):

(a) Successors, assigns, lessees, lenders, partners, contractors, subcontractors, investors, mortgagees of the Tribe with regard to (or otherwise engaged in activities upon) the Property;

(b) Parties holding legal, contractual, or equitable interests in the Property; and

(c) Parties who, due to the presence of Historic Contamination on, in, under or about the Property, may be considered to be the owner or operator or otherwise be deemed a liable party with regard to the Property as defined in either the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §9601 et seq.) or the Model-Toxics Control Act ("MTCA") (Chapter 70.105D RCW) as amended or other applicable contamination laws.

3.2 The Port's obligation to hold harmless, indemnify and defend Parties in Privity with the Tribe is subject to certain conditions and limitations set forth in the Implementing Agreement (see, for example, Section 5.3 "Notices," Section 5.4 "Limitations," and Section 6 "Uses").

3.3 This Indemnification shall be binding on any successor entity to the Port.

3.4 This Memorandum shall be liberally construed as an entire document to accomplish its purposes. However, each provision of this Memorandum shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

DATED this 5th of March, 1992.

THE PORT OF/ TACOMA

By \_\_\_\_\_  
Its President \_\_\_\_\_

STATE OF WASHINGTON      )  
                            )  
                            ) ss.  
COUNTY OF PIERCE        )

On this 5th day of March 199  , personally appeared before me Ned Shera, to me known to be the President of the PORT OF TACOMA and acknowledged to me that she/he signed the same as her/his free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 5th day of March, 1992.

NOTARY PUBLIC in and for the  
State of Washington, residing  
at Tacoma  
My commission expires 7/7/94

## **NOTICE TO PORT OF PARTY IN PRIVITY WITH THE TRIBE**

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

### **LAND PARCEL (Check one):**

<input type="checkbox"/> Inner Hylebos	<input type="checkbox"/> Blair Backup	<input type="checkbox"/> Blair Waterway
<input type="checkbox"/> Upper Hylebos	<input type="checkbox"/> East West Road	<input type="checkbox"/> Taylor Way

### **ENTITY IN PRIVITY WITH TRIBE:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person Name \_\_\_\_\_

Telephone No. \_\_\_\_\_

Title \_\_\_\_\_

Month/Year

Month/Year

### **TERM OF RELATIONSHIP:**

Start \_\_\_\_\_

End \_\_\_\_\_

### **NATURE OF RELATIONSHIP:**

### **PORt'S MAILING ADDRESS:**

Director, Environmental Affairs Department  
Port of Tacoma  
P. O. Box 1837  
Tacoma, WA 98401

DATE RECEIVED  
BY PORT: \_\_\_\_\_

PORT REVIEW  
PERSON: \_\_\_\_\_

PORT COMMENTS:

This notification is made pursuant to Section 5.3.2 of the Implementing Agreement  
Dated \_\_\_\_\_ between the Port of Tacoma and the Puyallup Indian Tribe.

DGM:ram;ExhBPriv;12/31/91

## **NOTICE OF USE AND/OR PHYSICAL ACTIVITY**

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

**LAND PARCEL** (Check one):

<input type="checkbox"/> Inner Hylebos	<input type="checkbox"/> Blair Backup	<input type="checkbox"/> Blair Waterway
<input type="checkbox"/> Upper Hylebos	<input type="checkbox"/> East West Road	<input type="checkbox"/> Taylor Way

**DESCRIBE ANY SPECIFIC PROPERTY USE, PHYSICAL ACTIVITIES IMPACTING SOILS, SEDIMENTS OR GROUNDWATER, AND TIMING OF SUCH ACTIVITIES:**

**TRIBE CONTACT PERSON:** \_\_\_\_\_ Telephone No. \_\_\_\_\_

**ENTITY PERFORMING PHYSICAL ACTIVITY:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person Name \_\_\_\_\_ Telephone No. \_\_\_\_\_

**ACKNOWLEDGMENT OF RESTRICTED USE:** The performing entity has read and will comply with paragraph 6 of the "Implementing Agreement Between the Port of Tacoma and the Puyallup Indian Tribe", to wit:

6. Use of Delayed Settlement Properties. The use of Delayed Settlement Properties shall be consistent with paragraph C(12) of Technical Document No. 1, and any applicable EPA Administrative Order on Consent or Consent Decree. Unless the Addendum for a particular Delayed Settlement Property provides otherwise and subject to Section 7 below, use of Delayed Settlement Properties shall prohibit the use of groundwater for drinking water purposes and shall be consistent with those uses allowed within "Industrial Zones M-2 and M-3" of the Tacoma Zoning Code as of the effective date of this Implementing Agreement (hereinafter collectively referred to as "Restricted Uses").

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

**PORt'S MAILING ADDRESS:** Director, Environmental Affairs Department  
Port of Tacoma  
P. O. Box 1837  
Tacoma, WA 98401

DATE RECEIVED  
BY PORT: \_\_\_\_\_

PORT REVIEW  
PERSON: \_\_\_\_\_

**PORT COMMENTS:**

---

This notification is made pursuant to Section 8 of the Implementing Agreement  
Dated \_\_\_\_\_ between the Port of Tacoma and the Puyallup Indian Tribe.

DGM:ram;ExhCPhys;3/5/92

Begin: Addendums 1-6

Final

ADDENDUM NO. 1  
INNER HYLEBOS PROPERTY

1. Inner Hylebos Property. The Final Investigation Report for the Inner Hylebos Property (Landau and Assoc., February 28, 1992) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Inner Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use except that for any excavation below three (3) feet of the surface on the spit portion of the Property, identified in the map attached hereto, use of groundwater for drinking water purposes shall be prohibited.

3. Marine Sediments. Certain areas of marine sediments within the Inner Hylebos Property were identified as potential problem areas in EPA's Commencement Bay/Nearshore Tideflats Record of Decision. These areas are not currently designated for active remediation, but for natural recovery. However, if natural recovery is not successful, active remediation may be required.

4. Tribal Dredging. The Port and the Tribe recognize that development of the Inner Hylebos Property may require certain areas to be dredged. Except as provided in this Addendum No 1, the Tribe will be responsible for the cost of such dredging.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty-percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute

toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of disposal of a cubic yard of uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount contributed by the Tribe shall be borne solely by the Port. The Port's obligation under this Section 6 is conditioned upon the Tribe first taking the following two steps:

6.1 The Tribe shall, in accordance with Section 8 of the foregoing Implementing Agreement, effective March 26, 1992, notify the Port in writing, of the Tribe's intention to conduct dredging activity at, on or under the Inner Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 404 dredge or fill permit to conduct dredging at, on or under the Inner Hylebos Property.

7. Port Disposal Site. In conjunction with other projects of the Port, the Port shall use its best efforts to permit a nearshore site for disposal of the Tribe's contaminated dredged materials associated with the Inner Hylebos Property. The Port and the Tribe shall cooperate in good faith to coordinate their respective activity with regard to the Port's permitting of a nearshore contaminated dredged materials disposal site to accommodate the Tribe's dredging and development of the Inner Hylebos Property. Subsequent to transfer of the Inner Hylebos Property, the Port's obligation to the Tribe under Section 6 above with respect to the Tribe's use of a specific disposal site for contaminated dredged materials shall expire with regard to that specific disposal site, 365 days after the date that the Tribe receives written notice from the Port of the availability of such nearshore disposal site.

8. Port Funding. The Port's financial obligation under section 6 of this Addendum No. 1, with regard to the dredging acceptance and disposal of contaminated materials from the Inner Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$2.30 per square foot of surface area to be dredged.

9. Dickman Dump. Large quantities of bark have been removed from the intertidal area surrounding the bulkhead in an area known as the Dickman Dump. The Tribe will manage any further bark removal and will secure any necessary approvals from appropriate agencies, including, but not limited to, the U.S. Army Corps of Engineers. Upon the Parties' execution of this Addendum No. 1, the Port shall make periodic payments upon receipt of invoice, by the Tribe or its agents, up to a total amount of \$85,000 toward costs associated with the planning,

design and removal of bark and any necessary backfill activity of the Bark Removal area.

10. Port Mitigation Measures. Subsection B(1)(a)(11) of Technical Document No. 4 to the Settlement Agreement allows the Port to create certain inter-tidal habitat within the Inner Hylebos property. The Parties agree that the Tribe may, at its option, provide the Port with written notice that the Tribe has elected to have the habitat mitigation described in that subsection provided for at other Tribal property. This substitution by the Tribe is subject to the approval of the Port, which approval shall not be unreasonably withheld. The Tribe may make this election so long as there is no difference in the Port's cost of creating the habitat and as long as the Port receives equivalent mitigation and/or enhancement credit.

11. Best Management Practices. The Tribe will implement best management practices at its marina with particular emphasis on in-water boat repair and maintenance activities, to prevent the potential for sediment contamination from marina activities.

12. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 1, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

PUYALLUP INDIAN TRIBE

---

DATE

Chair, Puyallup Tribal Council

PORT OF TACOMA

---

DATE

President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

---

DATE

FINAL

ADDENDUM NO. 2  
TAYLOR WAY PROPERTY

1. Taylor Way Property. The Final Investigation Report (Hart Crowser, October 15, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. A potential exists for Historic Contamination at this site to include offsite migration of volatile organics through the groundwater from the nearby BPA site to the Taylor Way Site due to disposal of waste lime sludge at the BPA site, although no volatile organic compounds were detected in Taylor Way groundwater samples. The Final Investigation Report concludes the site is appropriate for commercial and industrial uses. EPA, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the Taylor Way Property Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the property related to Historic Contamination, except that groundwater at the site shall not be used for drinking water purposes.

PUYALLUP TRIBE OF INDIANS

---

DATE

Chair, Puyallup Tribal Council

PORT OF TACOMA

---

DATE

President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

---

DATE

FINAL

ADDENDUM NO. 3  
EAST WEST ROAD PROPERTY

1. East West Road Property. The Final Investigation Report (Hart Crowser, August 27, 1991) concludes constituents of interest in soils are below MTCA residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW, and do not require remedial action. A risk assessment was conducted to evaluate impacts of groundwater contamination and the potential exposure via inhalation of volatile organics originating from the groundwater. Historic Contamination at this site includes offsite migration of volatile organics through the groundwater from the nearby BPA site to the East West Road Property due to the disposal of waste lime sludge at the BPA site. Historic Contamination at this site, including volatile organic compounds detected in East West Road groundwater samples, require the use restrictions set forth in paragraph 2 below. The Final Investigation Report concludes that with institutional controls the site is appropriate for industrial and commercial use. The Environmental Protection Agency, the Department of Ecology, and the Puyallup Tribe of Indians have concurred with the findings and conclusions of the East West Property Site Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of this property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial or industrial use of the property related to Historic Contamination, except that: (1) groundwater at the site shall not be used for drinking water purposes; (2) if required, groundwater disposal plan shall be prepared with regard to potential dewatering during construction; (3) appropriate worker protection shall be employed during ground intrusive construction activities; and (4) vapor barriers, gravel drains, venting or other appropriate measures shall be incorporated into design and construction of all structures with permeable floors built on this site.

THE PUYALLUP TRIBE OF INDIANS

---

DATE

Chair, Puyallup Tribal Council

THE PORT OF TACOMA

---

DATE

President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

---

---

DATE

ADDENDUM NO. 4  
UPPER HYLEBOS PROPERTY

1. Upper Hylebos Property. The Final Investigation Report (Landau & Assoc., May 10, 1991) concludes that the chemical constituents of concern in and about the soils are below residential cleanup levels established pursuant to the State of Washington Model Toxics Control Act, Chapter 70.105D RCW and do not require remedial action. The Final Investigation Report concludes that the site is appropriate for commercial and industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the findings and conclusions of the Upper Hylebos Final Investigation Report pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Use of Property. Pursuant to Section 6 of the Implementing Agreement there are no restrictions on commercial and industrial use of the upland portion of the property related to Historic Contamination, except that groundwater at the site shall not be used for drinking water purposes.

3. Marine Sediments. Certain marine sediments on the property may require remediation pursuant to the Commencement Bay/Nearshore Tideflats Record of Decision ("CB/NT ROD"). The most cost-effective approach with regard to marine sediments is to evaluate the cleanup alternatives and remedial design of the cleanup undertaken under the CB/NT ROD for the Head of the Hylebos Problem Area.

4. Tribal Dredging. The Port and Tribe recognize that, in addition to meeting the requirements of the CB/NT ROD, the configuration of the area to be dredged must meet the Tribe's development plan for the site. Such plan will be communicated to the Port, in writing, by January 1, 1994. The parties also recognize that certain areas of marine sediments at the property may need to be dredged by the Tribe for development, if sediment dredging is not required to comply with the CB/NT ROD. In such a case, the dredging will be conducted in accordance with the provisions of sections 4, 5, 6 and 7 of this Addendum No. 4.

5. Sediment Testing. If PSDDA standards for open water disposal are likely to be exceeded because of the presence of Historic Contamination, then the Port and the Tribe shall each pay fifty percent (50%) of any chemical and/or biological testing required.

6. Dredged Disposal. In the event that the presence of Historic Contamination precludes the disposal of dredged materials in or at an open water site, the Tribe shall contribute

toward the costs of such disposal a base amount per cubic yard of dredged materials. This base amount to be paid by the Tribe shall be equal to the then prevailing cost of dispose of a cubic yard of uncontaminated dredged materials at an open water site. All costs associated with disposal over the base amount contributed by the Tribe shall be borne solely by the Port. The Port's obligation under this subsection is conditioned upon the Tribe first taking the following two steps.

6.1 The Tribe shall in accordance with Section 8 of the Implementing Agreement, effective March 26, 1992, notify the Port in writing of the Tribe's intention to conduct dredging activity at, on or under the Upper Hylebos Property; and,

6.2 The Tribe shall submit an application for an Army Corps of Engineers Section 10/404 dredge and fill permit to conduct dredging at, on or under the Upper Hylebos Property.

7. Port Funding. The Port's financial obligation under Section 5 of this Addendum No. 4, with regard to the dredging acceptance and disposal of contaminated materials from the Upper Hylebos Property for disposal at an available disposal site shall not exceed a total cost of \$3.63 per square foot of surface area to be dredged.

8. Post-Remediation Monitoring. The Port will conduct sediment monitoring of the property subsequent to the remediation conducted as part of the Head of the Hylebos remediation .

9. Piling Removal. The Port will remove and replace up to ten (10) pilings located on the Upper Hylebos Property, if removal of such pilings is required to accommodate the dredge of the property as provided in this Addendum No. 4.

10. Execution. By their signatures set forth below the Parties agree to be bound by the terms and conditions set out in this Addendum No. 4, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

THE PUYALLUP TRIBE OF INDIANS

---

DATE

Chair, Puyallup Tribal Council

THE PORT OF TACOMA

---

DATE

President, Port Commission

APPROVED:

DEPARTMENT OF THE INTERIOR

---

DATE

01/08/93

ADDENDUM NO. 5  
BLAIR WATERWAY PROPERTY

1. Blair Waterway Property. The Final Investigation Report for the Blair Waterway Property (Landau and Assoc., February 24, 1992) concludes that there are chemical constituents of concern in and about the soils and sediments on this property. An Analysis of Alternatives was prepared for this property (Landau and Assoc., August 14, 1992). The Analysis of Alternatives included a Recommended Alternative. Performance of the Recommended Alternative and the steps required by the Implementing Agreement, including this Addendum #5, and the EPA Administrative Order on Consent including the continued performance of the Port's ongoing obligations under those documents, will render the site appropriate for industrial uses. The Environmental Protection Agency, Ecology and the Tribe have concurred with the Recommended Alternative with certain modifications, as set forth in the statement of Concurrence, dated October 2 and November 16, 1992, pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Remediation. The Port will perform the remediation described as the Recommended Alternative in the Analysis of Alternatives for the Blair Waterway Property, except as modified in this Addendum No. 5 or the Final Cleanup Plan, approved pursuant to the Memorandum of Agreement.

3. Use of Property. Pursuant to Section 6 of the foregoing Implementing Agreement there are no restrictions on industrial use related to Historic Contamination, except that: (a) groundwater at the site shall not be used for drinking water purposes; and (b) in the area of the Lincoln Avenue Ditch appropriate worker protection shall be employed during ground intrusive construction activities in accordance with an appropriate health and safety plan.

3.1 There exist two easement agreements among the Port, the Tribe, and Reichhold Chemical Co., dated November 27, 1991, which pertain to the use of the property.

3.2 The Tribe will conduct all activities on the property in a manner consistent with the institutional controls listed under subsections (a) and (b) of this Section 3.

4. Graving Dock. Pursuant to the March 21, 1990 Supplemental Agreement between the Port, the City of Tacoma and

the Tribe, the Tribe has directed the Port to fill the Graving Dock.

4.1 The Port, at its option, will fill the Graving Dock by one of the following methods, after obtaining all necessary governmental approvals:

4.1.1 Utilizing clean dredge sands as part of the Blair Navigation Project.

4.1.2 Utilizing sand material from upland sources such as the surplus fill sand material available from local sand and gravel pits.

4.1.3 Utilizing the existing bank material from approximately 1300' of the frontage of the Tribe's waterfront property to provide an 88' cutback of the embankment. This option could be undertaken following completion of the channel and bank face cleanup dredging, pursuant to the Blair Navigation Project. The remaining embankment will then be excavated and the material placed in the Graving Dock for fill as shown in the schematic cross section dated 10/28/92.

4.2 The Port will select the option it intends to pursue within 30 days following the entry of the Consent Decree covering the Sictum/Blair/Milwaukee project or the Consent Decree covering the transfer of the Delayed Settlement properties, whichever occurs later ("Option Selection").

4.3 The Port will complete the filling of the Graving Dock, depending on the option selected, as follows:

4.3.1 The option set forth in subparagraph 4.1.1 will be completed during the Blair Navigation Project.

4.3.2 The option set forth in subparagraph 4.1.2 will be completed within one year following the Option Selection.

4.3.3 The option set forth in subparagraph 4.1.3 will be completed within one year of the completion of the Blair Navigation Project or the Option Selection, whichever occurs later.

4.4 At any time after January 1, 1994, the Tribe may direct the Port, in writing, to fill the Graving Dock as described in subparagraph 4.1.2. Within 120 days following such written direction the Port shall submit application for all permits necessary to complete the filling.

4.5 The parties recognize that the filling of the Graving Dock will not be completed by March 24, 1993.

5. Mud Lake. The Port will use its best efforts to remove the stored dredge material from Mud Lake as soon as possible after the start of construction of the Blair Navigation Project. Commencing on March 24, 1993, the Port will pay the Tribe \$9,993.21 per month for the storage of the dredge material. This monthly rate is in accord with Section D.2.a.1. of Technical Document 1 of the Settlement Agreement, (\$0.0488 per month per square foot). The payments shall continue until September 21, 1994 unless terminated earlier at the Port's option upon 90 days written notice to the Tribe. The Port further agrees that within 30 days of the start of construction of the Blair Navigation Project, the Port will give the Tribe notice of the anticipated date of such termination. (A description of the storage area is attached.)

6. Transfer Span. The Port will remove and dispose of the Transfer Span located in the Blair Waterway adjacent to the Blair Waterway property at the time of the Blair Waterway dredging.

7. Lincoln Avenue Ditch. The Port and the Tribe agree that, in lieu of excavation of the contaminated materials in the Lincoln Avenue Ditch, the Port will fill the Lincoln Avenue Ditch in order to better accommodate the Tribe's development needs. The parties acknowledge that the Port will commit to perform any mitigation required for the filling of the Lincoln Avenue Ditch as part of the Administrative Order and/or Consent Decree covering the Blair Waterway property. Notwithstanding this fact, the Tribe shall have the responsibility of providing and maintaining any such mitigation required for the filling of the Lincoln Avenue Ditch. The Tribe recognizes that, if mitigation is required, the filling of the Lincoln Avenue Ditch may not be accomplished by March 1993 and the Tribe acknowledges that the inability to fill the Lincoln Avenue Ditch by that date because of mitigation requirements will not give rise to a claim for economic loss by the Tribe.

8. Satisfactory Progress. The parties agree that if the remediation of the Blair Waterway Property and Blair Backup Property is completed by June 30, 1993, the Port will have made satisfactory progress toward completion of its obligations pursuant to Section 9 of the Implementing Agreement. If the remediation is not completed by June 30, 1993, the parties recognize that the Tribe may assert any claims for economic loss it may have under the Settlement Agreement, in accord with Section 9 of the Implementing Agreement, including claims for the time period beginning March 24, 1993.

9. Other Claims. Except as provided in this Addendum #5, and the foregoing Implementation Agreement, nothing in the referenced documents shall limit or shall be deemed to waive any right or claim or authority that either party may have under applicable law.

10. Execution. By their signatures set forth below, the Parties agree to be bound by the terms and conditions set out in this Addendum No. 5, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

PUYALLUP INDIAN TRIBE

---

DATE

Chair, Puyallup Tribal Council

PORT OF TACOMA

---

DATE

President, Port Commission  
(Acting)

APPROVED:

DEPARTMENT OF THE INTERIOR

---

---

DATE

01/08/93

ADDENDUM NO. 6  
BLAIR BACKUP PROPERTY

1. Blair Backup Property. The Final Investigation Report for the Blair Backup Property (Hart Crowser, January 29, 1992) concludes that there are chemical constituents of concern in and around the soils on this property. An Analysis of Alternatives was prepared for this property (Hart Crowser, August 14, 1992). The Analysis of Alternatives identified a Recommended Alternative which includes the placement of excavated slag material from the Blair Waterway Property material in a 17-acre area ("Capped Area") on the Blair Backup Property. Performance of the Recommended Alternative and the steps required by the Implementing Agreement, including this Addendum #6, and the EPA Administrative Order on Consent, including the continued performance of the Port's ongoing obligations under those documents, will render the site appropriate for industrial use. The Environmental Protection Agency, Ecology and the Tribe have concurred with the Recommended Alternative with certain modifications, as set forth in the statement of Concurrence, dated October 2 and November 16, 1992, pursuant to the Memorandum of Agreement. A diagram of the property is attached.

2. Remediation. The Port will perform the remediation described as the Recommended Alternative in the Analysis of Alternatives for the Blair Backup Property, except as modified in this Addendum No. 6, or the Final Cleanup Plan approved pursuant to the Memorandum of Agreement.

3. Use of Property. Pursuant to Section 6 of the Implementing Agreement, there are no restrictions on Industrial use related to Historic Contamination, except that:

(a) groundwater at the site shall not be used for drinking water purposes; and (b) in the Capped Area appropriate worker protection will be employed during ground intrusive construction activities in accordance with an appropriate health and safety plan.

3.1 There exist two easement agreements among the Port, the Tribe, and Reichhold Chemical Co., dated November 27, 1991, which pertain to the use of the property.

3.2 The Tribe will conduct all activities on the property in a manner consistent with the institutional controls listed under subsections (a) and (b) of this section 3.

4. Charcoal Briquettes. The Port will remove the charcoal briquettes from the site, provided that the briquettes can be handled as a non-dangerous waste. If the briquettes cannot be handled as a non-dangerous waste, the Port and the Tribe will negotiate in good faith to determine the appropriate disposition of the briquettes.

5. Development of the Capped Area. The Tribe shall, in accordance with Section 8 of the foregoing Implementing Agreement, notify the Port in writing of the Tribe's intention to initiate the development on the Capped Area. Upon the receipt of such notification, the Port and the Tribe will address certain development costs associated with Historic Contamination, as set forth below:

5.1 If the development requires excavation in the Capped Area and the excavated material requires off-site disposal and designates as a dangerous waste or hazardous waste, the Port will pay the portion of the disposal cost in excess of the cost that would have been incurred by the Tribe for handling and disposal if the material had not designated as a dangerous or hazardous waste. The Port may, at its option, and in a timely fashion, conduct the excavation and disposal and, in such case, the Tribe will reimburse the Port for its share.

5.2 If the development requires subsurface work in the Capped Area, the Port will pay the additional cost of the subsurface work directly related to the presence of Historic Contamination. Such additional costs shall include, but not be limited to, (1) the actual costs incurred by the Tribe or a Party in Privity with the Tribe to the extent that they can be substantiated and documented, with reasonable certainty arising directly from the failure to complete the project within the time fixed in the construction contract for the project (e.g., contract penalties, equipment rental, etc.), and (2) the actual lost of revenue to the Tribe, to the extent that it can be substantiated and documented, with reasonable certainty, resulting directly from (a) the delay in the completion of the project within the time fixed in the construction contract, or (b) the delay in the Tribe's ability to commence operation of a business for which construction has been completed.

5.3 The provisions of subparagraph 5.2 shall not be applicable with regard to any subsurface work in the Capped Area after the initial development, unless five years has elapsed since completion of the prior development in connection with which a payment by the Port of additional costs under subparagraph 5.2 was made.

6. Business Interruption. The parties recognize that the Port, in the future, may be required to undertake additional cost-effective remedial activities with regard to the Historic

contamination in the Capped Area and that the Tribe and Parties in Privity with the Tribe may need to suspend uses in the Capped area along with other areas during such remedial activities. In recognition of this, the Parties agree:

6.1 The Port will reimburse the Tribe or a Party in Privity with the Tribe for its Loss of Revenue directly related to the necessity to suspend, for the Period of Interruption, the industrial use being actively conducted on the Capped Area at the time that additional remedial activities with regard to Historic contamination are required. Such Loss of Revenue may include revenue from operations being conducted outside the Capped Area if the suspension is necessitated by the suspension of uses on the Capped Area.

6.1.1. Loss of Revenue, covered by this subparagraph 6.1, shall be limited to: (a) for manufacturing operations conducted by the Tribe or a Party in Privity with the Tribe, the net sales value of production less the cost of all raw stock, materials and supplies utilized in such production; (b) for other operations conducted by the Tribe or a Party in Privity with the Tribe, the total net sales less cost of merchandise sold, materials and supplies consumed in the operations and service rendered; or (c) for net rental income to the Tribe as Landlord. If reimbursement is made under subsections (a) or (b) of this subparagraph 6.1.1, no reimbursement will be made under subsection (c). Due consideration shall be given to the experience of the business before the interruption and the revenues (as described in subsections (a) (b) or (c), above) that would have accrued, absent the Period of Interruption.

6.1.2. The Period of Interruption covered by this subparagraph 6.1 shall: (a) for operations addressed in subparagraph 6.1.1(a) or (b), extend from the first day that some or all of the ongoing use must be suspended and continue until the industrial use can be resumed at the same or equivalent physical and operating conditions that existed prior to the interruption; or (b) for the Tribe as landlord addressed in subparagraph 6.1.1(c), from the first day of loss of rent to the date when the rent is due to be resumed.

6.2 The term "industrial use" as used in this paragraph 6 shall mean those uses permitted within Industrial Zones M-2 and M-3 of the Tacoma Zoning Code in effect on March 26, 1992.

6.3 The Port's liability for reimbursement under this paragraph 6 shall be conditioned on the Tribe using its best efforts to conduct its operations in a manner designed to minimize the disturbance of Historic Contamination, to cooperate in good faith with the Port in the Port's efforts to minimize expense to the Port to facilitate the Port's performance of its

obligations under this Implementing Agreement. The Tribe's obligations for notification under paragraph 8 of the Implementing Agreement shall not be altered by this paragraph. Nothing herein should be construed to limit the Tribe's ability to develop its property.

7. Port Payments. The Port's liability for reimbursement under paragraphs 5 and 6 of this Addendum #6 shall be limited to the square footage of the portion of Blair Backup Property on which business or operations are affected multiplied by two dollars and fifty-three cents (\$2.53). The Port, at its option, and at any time, may provide business interruption insurance naming the Port as additional insured.

8. Fencing. The Port will sell the existing fencing on the property to the Tribe for \$28,099.42. Payment shall be made within 30 days after the Bureau of Indian Affairs has accepted the Blair Backup Property into Trust.

9. Satisfactory Progress. The parties agree that if the remediation of the Blair Waterway Property and Blair Backup Property is completed by June 30, 1993, the Port will have made satisfactory progress toward completion of its obligations pursuant to Section 9 of the Implementing Agreement. If the remediation is not completed by June 30, 1993, the parties recognize that the Tribe may assert any claims for economic loss it may have under the Settlement Agreement, in accord with Section 9 of the Implementing Agreement, including claims for the period beginning March 24, 1993.

10. Other Claims. Except as provided in this Addendum #6, and the foregoing Implementation Agreement, nothing in the referenced documents shall limit or shall be deemed to waive any right or claim or authority that either party may have under applicable law.

11. Execution. By their signatures set forth below, the Parties agree to be bound by the terms and conditions set out in this Addendum No. 6, which upon execution shall become a part of and incorporated within the foregoing Implementing Agreement between the Port of Tacoma and the Puyallup Indian Tribe.

PUYALLUP INDIAN TRIBE

---

DATE

Chair, Puyallup Tribal Council

PORT OF TACOMA

---

DATE

---

President, Port Commission  
(Acting)

APPROVED:

DEPARTMENT OF THE INTERIOR

---

---

DATE

## Begin: Supplemental Agreement - Settlement Agreement

SUPPLEMENTAL AGREEMENT  
between the  
PORT OF TACOMA  
and the  
PUYALLUP INDIAN TRIBE  
concerning  
THE SETTLEMENT AGREEMENT

### I. TRANSFER AND USE OF CERTAIN SETTLEMENT LANDS

This Supplemental Agreement between the Port of Tacoma ("Port") and the Puyallup Indian Tribe ("Tribe"), and approved by the Department of Interior pursuant to 25 U.S.C. § 81, is made to set forth the manner in which the parties will carry out certain aspects of the Settlement Agreement that is incorporated in the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41.

1. The Settlement Agreement provides that title to certain lands ("Settlement lands") shall be conveyed to the United States in trust for the Tribe. The Settlement Agreement contemplates that title to some of those lands may not be conveyed on the effective date of the Settlement Agreement ("effective date"), but will instead be conveyed at some later date. The following lands ("delayed settlement properties") will not be conveyed on the effective date:

Blair Waterway Property  
Blair Backup Property  
Inner Hylebos Property  
Upper Hylebos Property  
Taylor Way Property  
East-West Road Property

(These properties are described on pages 2 and 3 of the Settlement Agreement.)

2. This Supplemental Agreement spells out the procedure by which the parties will complete the transfer of the delayed settlement properties to the United States at the appropriate times, and a procedure to facilitate use of the properties, where appropriate, by the Tribe during contamination cleanup.

3. The Port will execute a statutory warranty deed conveying each settlement property as provided in the Settlement Agreement and prior to the effective date such deeds will be placed with an escrow agent acceptable to the Port and the Tribe.

The Port will provide copies of the deeds to be placed into escrow to the Tribe at least five days prior to the effective

date. The escrow agent will be given instructions for the release of each deed which shall include the following: (a) each deed shall only be released when the escrow agent is directed, jointly and in writing, by the Port and the Tribe to do so; (b) the Port and the Tribe may direct the escrow agent to release a deed for the purpose of conveying a portion of settlement property. In such case, a deed for the remaining property will be placed into escrow; (c) neither the Port nor the Tribe shall refuse to instruct the escrow agent to release a deed when the property has been cleaned up to the standards set forth in the Settlement Agreement; (d) the deeds shall be returned to the Port by the escrow agent if the effective date does not occur by April 1, 1990; and (e) this escrow shall terminate when all deeds have been either released to the United States or returned to the Port. A deed shall be returned to the Port only if the Tribe has selected alternative lands in lieu of that parcel pursuant to section C(11)(f) of Technical Document #1 and a deed for that alternative land has been executed by the Port, approved by the Tribe, and delivered to the United States. The escrow instructions will direct the escrow agent to send each deed at the appropriate time to the Superintendent of the Puget Sound Agency of the Bureau of Indian Affairs.

4. The Port will continue to be bound by the obligations of section C(3) of Technical Document #1 to the Settlement Agreement as to each piece of property until the property is released from the escrow, unless that obligation is modified by a lease executed pursuant to paragraph 5(c) of this Supplemental Agreement. That section requires the Port to "maintain all [settlement] properties with reasonable care and in a state of reasonable maintenance..."

5. a. Upon the completion of the surface cleanup, or a determination that surface cleanup is not required, on any deferred settlement property or any portion of any of those properties, or on March 24, 1993, whichever occurs first, the Tribe may request that the Port either (1) transfer such deferred settlement property or portion into Trust, as provided in subparagraph 5.b.; or (2) lease such deferred settlement property or portion to the Tribe, as provided in subparagraph 5.c.

b. Upon the request of the Tribe under subparagraph 5.a., the Port and the Tribe will instruct the escrow agent to release the deed to the property or portion to the United States for transfer into trust for the Tribe, if the following conditions are met as to the property or portion:

i. The Tribe conveys to the Port an easement, approved by the Secretary of Interior, for one dollar (\$1.00) per year to allow cleanup of any remaining contamination on the property and the Tribe agrees not to unreasonably interfere with the Port's cleanup activities. The area of such easement shall

be defined by the Port; however, the area of such easement shall be reasonably related to the requirements of the cleanup plan.

ii. The Tribe waives in writing its right to liquidated damages and alternative lands as provided in section C(11)(f) of Technical Document #1.

iii. The Tribe agrees to survey any settlement property subparcel which is to be taken into trust and the Port will execute a warranty deed for such subparcel.

iv. The Tribe holds the Port harmless and indemnifies the Port for any contamination occurring subsequent to the release of the parcel from escrow, other than contamination caused by the Port or its agents.

v. The Tribe agrees that it will not undertake any activity on the property until the Port and the Tribe have reached agreement concerning the allocation of any additional costs which will be incurred by the Port as a result of the Tribe's activities.

c. Upon the request of the Tribe under subparagraph 5.a., the Port will execute a lease to the Tribe for one dollar (\$1.00) per year if the following conditions are met as to the property or portion:

i. The Port and the Tribe draft and agree on a lease which includes, but is not limited to, the following:

A. Description of the activity to be conducted;

B. A map and description showing where the activity will be conducted;

C. The length of the lease;

D. Any limitations necessary to insure that the Tribe's activity will not unreasonably interfere with the Port's cleanup activities and an agreement that the Tribe will not undertake any activity on the property until the Port and the Tribe have reached agreement concerning the allocation of any additional costs which will be incurred by the Port as a result of the Tribe's activities.

E. An indemnification of the Port by the Tribe against liability for contamination caused by the Tribe or its agents, and any other provisions necessary to protect the Port;

F. A procedure for modification of the lease if that becomes necessary to prevent interference with the Port's cleanup activities; and

G. A written waiver by the Tribe of its right to liquidated damages as provided in section C(11)(f)(1) of Technical Document #1.

6. If the Tribe exercises its right to assume responsibility for cleanup of any delayed settlement property under section C(11)(f)(2) of Technical Document #1, the Tribe and the Port shall direct the escrow agent to release the deed to the Bureau of Indian Affairs

7. Except as provided in this Agreement, a lease under subparagraph 5.c. of this Supplemental Agreement shall not in any way limit or affect the Tribe's rights and remedies under the Settlement Agreement unless the lease specifically so provides.

8. The Port will expedite cleanup of surface contamination of the delayed settlement properties so as to complete that cleanup as rapidly as possible consistent with the cleanup standards required by the Settlement Agreement. The Tribe will provide to the Port the order in which the Tribe prefers to have the properties cleaned up. The Port will use its best efforts to accommodate the Tribe's preferred order.

9. By agreement dated July 27, 1987, the Port conveyed to the Tribe a valuable leasehold interest on 19 acres of property known by the parties as the Blair Backup property. The Blair Backup property is included as part of the settlement lands to be conveyed to the Tribe under the Settlement Agreement. The current improvements on the 19-acre site ("improvements") are a 6,000 square foot manufacturing facility, 2,000 square foot of covered paved area and 3,000 square feet of office space. The Port will make the following arrangements when it carries out required cleanup activities on the Blair Backup property:

a. If the cleanup can be conducted without unreasonable interference and disruption to the Tribe's use of the 19 acres, the Tribe shall remain in possession of and have access to and the use of the 19 acres. The use of such land, other than the improvements set forth above, shall be subject to the Port's written approval. Any sublease of the property shall be month-to-month. The Port agrees to give the Tribe 45 days notice when the cleanup activities require that those uses or subleases must be terminated. Except when uses or subleases must be terminated as provided in this paragraph, any fencing or other security barriers that are placed on the Blair Backup property, shall allow access to the 19 acres.

b. If the cleanup cannot be conducted without unreasonable interference and disruption to the Tribe's use of the current improvements, the Tribe will vacate the premises for a period of time to be agreed upon by the parties so that the Port may carry out cleanup activities. The Port will give 60 days notice to the Tribe of the need to vacate the property so that interference with the Tribe's activities can be managed in the most satisfactory manner. If the Tribe must vacate the manufacturing facility and paved area for a period of 14 days or more, the Port will pay to the Tribe the sum of two thousand dollars (\$2,000.00) per week for the time that the Tribe does not have the use of those improvements. If the Tribe must vacate the office space for a period of 14 days or more, the Port will pay the Tribe the sum of two thousand dollars (\$2,000.00) per week for the time the Tribe does not have use of the office space. In lieu of those payments, the Port may, at its option, carry out steps (i) and (ii), below. If it chooses that alternative, the Port will, after reasonable notice to the Tribe:

- i. either, at the Port's option:
  - (a) relocate at the Port's expense the existing manufacturing facility, including the Tribe's machinery, tools, inventory, and other equipment and materials, to the Taylor Way or East-West Road parcel, or
  - (b) provide alternative facilities for the manufacturing facility. If this option is chosen, the facilities will be provided for a minimum of one (1) year from the date of relocation, and the Tribe's machinery, tools, inventory, and other equipment and materials will be moved to the new location at the Port's expense. The Port will pay to return the manufacturing operation to the Blair Backup Property if the operation is moved within ninety (90) days after the Port notifies the Tribe that the return is feasible;
- ii. provide replacement office space on a month-to-month basis. When use of the existing office space is once again feasible, the Tribe will relocate to the Blair Backup property on sixty (60) days notice at the Port's expense.

10. Nothing in this Supplemental Agreement shall limit or impair the remedies set forth in the Settlement Agreement for failure by the Port to complete cleanup of contamination on settlement properties in a timely manner, except as explicitly set forth in this Supplemental Agreement or in any lease entered

into under the provisions of subparagraph 5.c. of this Supplemental Agreement.

11. The Port shall not, at any time prior to release of the deeds from the escrow account, cause or allow any lien, encroachment or other encumbrance to be attached to any of the delayed settlement properties except those required for the cleanup and those agreed to in writing by the Tribe. The Port warrants that should any such lien, encroachment or other encumbrance be attached to any of the delayed settlement properties in violation of this provision, the Port will cause it to be removed as quickly as possible. The Port further warrants that the following easements will be removed prior to conveyance: AFN 1275300 and AFN 1306029. If the presence of (a) the above listed easements or (b) any lien, encroachment or encumbrance not disclosed on the face of the deed, attached after the effective date of the Settlement Agreement, and not agreed to in writing by the Tribe delays for more than 60 days the transfer of title or interferes with the Tribe's use of the property in a situation where transfer or use would otherwise take place under the provisions of section 5 of this Supplemental Agreement, the Port will pay liquidated damages to the Tribe calculated as follows: If transfer of title is delayed, damages will be in an annual amount equal to 10% of the settlement stated value of the parcel. If there is interference with the Tribe's use of the entire parcel, damages will be in an annual amount equal to 10% of the settlement stated value of the parcel. If there is interference with the Tribe's use of a portion of the parcel, damages will be in an annual amount equal to 10% of the settlement stated value of the portion of the parcel which cannot be used. Damages will be calculated from the time title to the parcel would have been conveyed to the Tribe or the time use of the parcel or portion thereof would have commenced, whichever is applicable, until the encroachment or encumbrance is removed.

12. Section C(6) of Technical Document #3 addresses settlement properties that are subject to continuing leases. For each delayed settlement property, the Port and the Tribe agree to handle existing leases in accordance with Section C(6) as modified by this paragraph, until the parcel is released to the United States.

- a. The Port shall continue to perform all obligations as the lessor, including rigorous enforcement of all provisions of the leases, unless otherwise agreed by the parties.
- b. The Port shall pay to the Tribe all rents due the lessor under the leases, less any amounts required for taxes and utility payments, within 21 days of receipt of such rent by the Port.

c. When a parcel is released to the United States:

- i. existing leases on that parcel shall be handled pursuant to the provisions of Technical Document #1;
- ii. the Port shall transfer to the Tribe any deposits, advance payments, or other sums that the Port is holding on behalf of lessees.

13. The Port will use its best efforts to extinguish the alleged easement (attached as Exhibit A) and have the wells removed, or execute an easement under which the number of wells are limited, located or configured in a manner satisfactory to the Port and the Tribe to assure that the affected parcels are usable for commercial or industrial purposes.

a. If the alleged easement is not removed or resolved in a manner satisfactory to the Port and the Tribe upon completion of the surface cleanup or within 24 months of the effective date of the Settlement Agreement, whichever occurs first, the Port recognizes that the Tribe may assert a claim under the Settlement Agreement against the Port arising from the installation or presence of wells on the easement. The Port and the Tribe agree that if the Tribe asserts such a claim, the measure of damages shall be the reduction of the value, if any, of the parcel or portion of the parcel for commercial or industrial purposes caused by the existence of the alleged easement.

b. The parties agree to submit the claim to binding arbitration on the issue of reduction of value by three appraisers (MAIs). Each party shall select one appraiser and the two appraisers shall select the third. In making their appraisal of diminished value, the appraisers shall not consider the diminished value of the property caused by environmental contamination.

c. In addition to the other provisions of this paragraph the Port recognizes that the Settlement Agreement provides that if the cleanup of the Blair Backup Property or the Blair Waterway Property is not complete within three years after the effective date of the Settlement Agreement, except as otherwise provided in this Supplemental Agreement, the Tribe has a claim pursuant to Paragraph C(11)(f) of Technical Document #1 arising from the existence of wells on those parcels.

14. The Port and Tribe agree that they will use their best efforts to ensure that the actions under this Agreement will be accomplished as expeditiously as possible.

## II. MILWAUKEE WATERWAY FILL PROJECT

15. Section (A) of Technical Document #4 provides that the Port will pay to the Tribe \$750,000 for fisheries enhancement "at the time that the Milwaukee Waterway Fill project is undertaken." The Port and the Tribe, for the purpose of clarification, agree that these funds will be paid on the following schedule:

a. \$375,000 when the Port has received a permit for the Milwaukee Waterway Fill Project from the U.S. Army Corps of Engineers;

b. \$375,000 when the Port lets the first major construction contract for the Milwaukee Waterway Fill project.

DATED this 24th day of March, 1990

PUYALLUP INDIAN TRIBE

---

Henry John  
Chairman, Puyallup Tribal Council

PORT OF TACOMA

---

Jack Fabulich  
Port Commissioner

Approved as to form:

---

John Howard Bell  
Attorney for Puyallup Indian Tribe

---

Charles R. Blumenfeld  
Attorney for Port of Tacoma

APPROVED:

DEPARTMENT OF INTERIOR

---

EXHIBIT A

April 29, 1987

S21487.F5

Reichhold Chemicals, Inc.  
525 North Broadway  
White Plains, New York 10603

Dear Sirs:

This letter is in response to the March 6, 1987, letter from Kenneth Trotman of CH2M HILL requesting access easement to install, maintain, and sample groundwater monitoring wells on Port of Tacoma property. As an authorized representative of the Port of Tacoma, I hereby grant the requested access easement to Reichhold and its assigned agents.

It is agreed that after Reichhold has completed drilling sampling, maintenance, or other activities, it will restore the property to a condition similar to that which existed prior to the activities. This approval is subject to the "Hold Harmless and Indemnity Agreement" attached to this letter.

Sincerely,

Port of Tacoma

Attachment

HOLD HARMLESS AND INDEMNITY AGREEMENT

IN CONSIDERATION of permission granted to it by the PORT OF TACOMA to install monitoring wells as described in the letter annexed hereto as Exhibit "A," the undersigned agrees to defend and save harmless the Port of Tacoma against any and all claims by third parties arising from the installation or presence of such wells or from the presence or activities of the undersigned's agents, employees, or business invitees in connection with such installation or presence.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1987.

REICHHOLD CHEMICALS, INC.

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

**Begin: Supplemental Agreement - Blair Waterway Property and Blair Navigation Project**

**SUPPLEMENTAL AGREEMENT**

**between the**

**PORT OF TACOMA,  
the  
CITY OF TACOMA,  
and the  
PUYALLUP INDIAN TRIBE**

**concerning**

**BLAIR WATERWAY PROPERTY AND BLAIR NAVIGATION PROJECT**

This Supplemental Agreement between the Port of Tacoma ("Port"), the City of Tacoma ("City") and the Puyallup Indian Tribe ("Tribe"), and approved by the United States Department of the Interior ("Interior") pursuant to 25 U.S.C. § 81, is made to set forth the manner in which the parties will carry out certain aspects of the Settlement Agreement that is incorporated in the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41.

1. PURPOSE. Among the provisions of the Settlement Agreement are those conveying the Blair Waterway and Blair Backup properties to the Tribe, and those addressing the Blair Navigation Project. (The term "Blair Waterway property" as used in this Supplemental Agreement means the parcel by that name to be received by the Tribe under the provisions of section I(A) of the Settlement Agreement.) The parties have discovered, subsequent to their ratification of the Settlement Agreement, that there are questions and areas of uncertainty about those provisions. If those issues are not resolved and clarified, they threaten to interfere with the Tribe's use of the properties for a shipping terminal facility and with the parties' desire to maximize the beneficial use of the Blair Waterway. Because a shipping terminal facility is one of the central and most vital parts of the Settlement to the Tribe, and because the Blair Navigation Project is important to all the parties, this Supplemental Agreement resolves these issues. The Port and the City will execute a separate agreement to address allocation of certain costs and payment between them.

2. MODIFICATION. To the extent they are inconsistent, this Supplemental Agreement shall be deemed to modify the Settlement

Agreement. Except as specifically modified, the terms of the Settlement Agreement shall remain in full force and effect.

3. PROJECTS. Pursuant to a separate agreement' the Port and the City will design, manage, and carry out the projects listed in this section and described more fully in the rest of this document. As provided in section H of Technical Document #1, the Tribe shall have the right of approval of the plans and specifications for these projects; provided, however, that section shall apply to relocation of the water line addressed in subsection (a), below, only where that project crosses or directly affects the Tribe's property. If an objection raised by the Tribe pursuant to section H will significantly increase the cost of a project described in this document, the parties will negotiate allocation of the additional amount.

a. The City will relocate to a land route around the south end of Blair Waterway the 36" water line that is discussed in section D(1)(b)(1) on page 11 of Technical Document #1.

b. The City will relocate the sanitary sewer line that is discussed in section D(1)(b)(1) on page 11 of Technical Document #1.

c. The Port will, as part of the Blair Navigation Project, dredge in front of the Tribe's Blair Waterway property from the channel line to the pierhead line to a depth of at least -45 feet (with the additional allowances contained in Technical Document #6).

d. The Port will fill the graving dock on the Blair Waterway property to the normal capping level. The Tribe shall be responsible for capping the graving dock.

e. The Port will remove material in the temporary storage area known to the parties as "Mud Lake" on the Blair Waterway property. The Port will then fill the reservoir to the elevation of the adjoining undisturbed portions of the property.

4. WATER LINE RELOCATION. The water line referred to in section 3(a), above, will be relocated under the following terms and conditions:

a. Removal of the water line from the Blair Waterway property shall be completed prior to the time when dredging for the Blair Navigation Project reaches the current location of the water line. Until that time, the water line shall be permitted to stay in place.

b. After modification and release of easements pursuant to the Settlement Agreement, the existing easement for the water line across the Blair Waterway property has a gap of

approximately ten feet in its legal description. The Tribe agrees that until the water line is relocated and the existing line abandoned (as evidenced by notice to the Tribe from the City), the City's easement shall be deemed to cover the area omitted from the legal description so that the easement will be continuous for the length of the water line.

c. The existing easement for the current water line will be deemed to expire upon completion of the relocation project and the existing line abandoned (as evidenced by notice to the Tribe from the City). Upon completion of the project, the City agrees to execute and convey to the Tribe a release of easement.

d. The Tribe will grant to the City two easements across the Puyallup River: one for a tie-line to the Milwaukee Way main; one for construction of pipe line #5. The easements will be granted at no cost to the city, other than the City's expenditures for the projects described in this document.

e. Project construction in and under the Puyallup River will be timed to minimize impacts on juvenile salmonid migrations and interference with Tribal members' fishing activities. Construction in the river shall be permitted only between June 15 and September 1. If the Tribe's fisheries and environmental concerns have been satisfied, the Tribe agrees to cooperate in the necessary permitting and approval process within a reasonable time period. Work may be carried on after September 1 if the City and Tribe agree on an appropriate schedule and the work is permitted by applicable law.

f. The Port shall provide necessary easements to the city across Port property at no cost to the City. The form of the easement(s) shall be substantially similar to the easement attached as Exhibit A.

g. The Port shall remove the existing water pipe from the Blair Waterway; removal of the abandoned pipe on the Blair Waterway property shall not be the responsibility of the Port or the City, and shall become the property of the Tribe.

5. SEWER LINE RELOCATION. The location of the sewer line referred to in section 3(b), above, will be modified under the following terms and conditions:

a. That part of the sewer line located in the Blair Waterway will be lowered and reconstructed within its current or a new easement to a depth sufficient to allow dredging, between the channel lines and between the channel and pierhead lines in front of the property, to a depth of 45 feet plus the additional allowances described in Technical Document #6 (e.g., at least an

additional foot for advance maintenance plus two feet for contractor's allowance).

b. That part of the sewer line located on and adjacent to the Tribe's Blair Waterway property will be lowered and reconstructed at a level at least 48 feet below MLLW from the bulkhead line to the channel line fronting the property so as to eliminate conflicts with the Tribe's use of the property for pier development and berthing and terminal operations.

c. Modification of the sewer line shall be completed no later than six months after the date on which dredging for the Blair Navigation Project reaches the current location of the sewer line.

6. DREDGING. The dredging referred to in section 3(c), above, shall be carried out under the following terms and conditions:

a. The Port may, at its option, (i) perform additional dredging in other areas of the Blair Waterway to achieve greater depths in the channel or channel to-pierhead zone, and (ii) enlarge the turning basin at the upstream end of the Blair Waterway in the locations indicated on the map attached as Exhibit B; provided that these activities must be done in compliance with the standards for dredging in the Blair Waterway set forth in the Settlement Agreement and Technical Document #4. As long as the enlargement is done in compliance with those standards, the activities conducted in accordance with this paragraph shall be deemed to be part of the Blair Navigation Project and as such shall have the Tribe's approval as provided in section IV(B) (2) of the Settlement Agreement.

b. The parties agree that the term "to Lincoln Avenue" as used in the second paragraph of section A(2) of Technical Document #6 shall mean the center line of Lincoln Avenue as extended into Blair Waterway.

7. GRAVING DOCK. The fill of the graving dock referred to in section 3(d), above, shall be carried out under the following terms and conditions:

a. All dredge materials placed in the graving dock shall meet the requirements of applicable law for open water disposal and shall meet the disposal standards of federal and state law.

b. Dredge materials placed in the graving dock shall be suitable for use as fill that will leave the property, after the Tribe has capped the fill, usable for its intended purpose as a shipping terminal facility.

c. The graving dock shall be filled during the Blair Navigation Project dredging, unless the Port and the Tribe agree to a different schedule. The Tribe may, at the Tribe's option, direct the Port (1) not to fill the graving dock, or (2) to place the dredge materials on uplands adjoining the graving dock. If the Tribe chooses option (1) of this subparagraph, the Port shall not be obligated to provide for the fill of the graving dock. If the Tribe chooses option (2) of this subparagraph, the Port shall, if permitted by applicable laws, place the dredge materials on uplands adjoining the graving dock in a manner agreed upon by the Tribe and the Port.

8. MUD LAKE. Removal and fill of Mud Lake referred to in section 3(e), above, shall be carried out under the following terms and conditions:

a. The Port shall remove the dredge material and liner from the reservoir that were placed there by the Port and that are not suitable for fill and remediate all remaining contaminated materials regardless of their source, consistent with the terms of the Settlement Agreement and Technical Document #1.

b. All material placed in the reservoir shall be clean and uncontaminated and shall meet the requirements of federal and state law. The term "clean and uncontaminated" is defined as material which would meet or exceed the soil conditions required as a result of the MOA dated March 21, 1990 between the Tribe, Port, United States Environmental Protection Agency, and Washington Department of Ecology.

c. Material placed in Mud Lake shall be material suitable for use as fill that will leave the property usable for its intended purpose as a shipping terminal facility. The Port shall not be responsible for paving Mud Lake.

d. Mud Lake shall be filled before or during the Blair Navigation Project dredging, unless the Port and the Tribe agree to a different schedule.

9. COST. The parties shall divide the cost of the actions described in this document as follows:

a. The Port and the City shall pay the costs of the improvements described in this document, pursuant to a separate agreement between them. The Tribe will reimburse them for a portion of those costs as set forth below.

b. If and when the Tribe or a developer pursuant to an agreement with the Tribe undertakes substantial development of the Blair Waterway property, it shall pay to the City the sum of \$450,000 plus the amounts, if any, determined under subsections

(d) and (e), below. The Tribe shall make this payment from funds the Tribe obtains for the purpose of that development. The Tribe shall make the payment within 60 days of the availability of the first proceeds of construction financing or funding to be used for this development.

c. The Tribe will pay to the Port the sum of \$450,000 plus the amounts, if any, determined under subsections (d) and (e), below. This amount shall be in payment for dredging in front of the Blair Waterway property (see section 3(c), above), filling the graving dock, and excavating and filling Mud Lake. This amount shall be paid as set forth in subsection (f), below.

d. The Tribe's payment obligations set forth in subsections (b) and (c), above, shall be indexed from the effective date of the Settlement Agreement through the date on which the City awards the contract for said sewer relocation. The Engineering News Record Seattle Construction Cost Index will be used.

e. Beginning on the date on which the indexing described in subsection (d), above, ends, the remaining amount owed by the Tribe will accrue interest at the rate of eight percent (8%) simple interest, calculated by the diminishing balance method, until paid in full.

f. The total amount to be paid to the Port under sections 9(c), 9(d), 9(e), and 10 of this Supplemental Agreement shall be paid by the Tribe as follows:

(1) During the first five years of the schedule set forth in section D(2) of Technical Document #6, the Tribe will pay simple interest at the rate of 8% on the principal amount;

(2) During years 6 through 20 of that schedule, the Tribe will pay the principal amount owed plus simple interest at the rate of 8%, calculated by the diminishing balance method, amortized over that 15 year period.

(3) The Port may, at its option, choose to offset the amounts owed by the Tribe against its payments to the Tribe under section D(2) of Technical Document #6, in lieu of receiving payments from the Tribe.

g. If the total cost of the projects listed in section 3 of this Supplemental Agreement is less than three million dollars, the Tribe's obligation to pay and reimburse the City and the Port under subsections (b) and (c), above, shall be reduced by an amount equal to 30% of the amount by which the total cost falls short of three million dollars. The reduction shall be

allocated between the payments to the Port and the City in a manner to be determined by the Port and the City.

10. COST OF SURVEYS. Pursuant to section C(7) of Technical Document #1, the Port has carried out surveys of each parcel that it will convey to the Tribe in the settlement. Although the cost of these surveys would otherwise be paid to the Port by the Tribe on the effective date, the Port instead agrees to deferred payment of the total cost in the sum of \$42,000 plus eight per cent (8%) simple interest from the effective date, calculated by the diminishing balance method. Payment by the Tribe will be made in the manner prescribed in section 9(f) of this Supplemental Agreement.

11. ASSESSMENT CHARGE. Tacoma City Code section 12.10.153 provides that in some circumstances water service will be provided only upon payment of a water main connection charge. This charge is in addition to the normal service construction charge. The Blair Backup property would ordinarily be subject to a connection charge when the owner requests water service. The City agrees to waive the connection charge that would otherwise be applicable under City Code section 12.10.153. The Tribe, like any other customer, will be subject to the ordinance rate charges for obtaining water service including the water service construction charge for the meter, piping, and other customary items. The City warrants that City Code section 12.10.153 is not presently applicable to any of the other settlement properties that are within the Tacoma city limits.

12. OPTION FOR ANODE BED AREA EASEMENT. In exchange for the waiver given in paragraph 11 of this document, the Tribe grants to the City and its Water Division the option of obtaining an easement (at no cost to the City) for an anode bed area (50 feet by 18 feet) beneath the pier/dock structure between the bulkhead line and the pierhead line. The City agrees that if it exercises the option and obtains an easement for that purpose, it will use the easement in a manner that will not interfere with the Tribe's pier/dock structure or its use.

13. REVISION OF CITY POWER LINE. There exists along the west side of Alexander Avenue a power line which, unless it is modified, will interfere with transportation of containers from the Blair Waterway property to the Blair Backup property. The City agrees to modify the configuration of that power line to provide a crossing at least 150 feet wide between those two properties where the power line is either placed underground or raised to allow at least a 40 foot clearance. This modification is in addition to the modifications in a separate power line on the east side of Alexander Avenue that are described in section D(1)(b)(1) of Technical Document #1.

14. PERMIT TO RETAIN UTILITIES. The Tribe hereby grants to the City and its Department of Public Utilities, Light, Water and Belt Line Divisions, and Public Works Sewer Utility Division, a temporary permit to retain in their present location certain utility facilities in, on, under, over, across and within Sections 27, 35 and 36, Township 21 North, Range 3 East, W.M., which property is being transferred by deed to the United States in trust for the Tribe under the Settlement Agreement. This permit shall remain in effect until the Tribe or its lessee has executed a contract for substantial development of the Blair Waterway property, at which time the Tribe may notify the City by certified letter from the Tribal Council that those utility facilities must be removed or relocated to the revised easement area as prescribed in the Settlement Agreement. The subject utility facilities are: power lines, water mains and hydrants, rail tracks and sewer facilities. The notice of removal or relocation shall be delivered to the City Manager and to the Director of Utilities and shall allow a minimum of 180 days from the date of service of the letter for completion of the removal or relocation.

15. TRACKAGE. The City agrees that title to the Belt Line Railroad trackage located in the vacated Lincoln Avenue corridor on the Blair Waterway property shall be transferred to the Tribe on the date that the Blair Waterway property is conveyed to the United States in trust for the Tribe.

16. DEPARTMENT OF THE INTERIOR APPROVAL. The Tribe will, as part of a Supplemental Agreement between the Tribe and Interior, obtain advance approval from Interior for the easements and permit described in paragraphs 12 and 14, above.

DATED this 21st day of March, 1990.

PUYALLUP INDIAN TRIBE

---

Henry John  
Chairman, Puyallup Tribal Council

PORT OF TACOMA

---

Robert Earley  
President, Port Commission

CITY OF TACOMA

Karen Vialle  
Mayor

Approved as to form:

APPROVED:

John Howard Bell  
Attorney for  
Puyallup Indian Tribe

DIRECTOR OF UTILITIES

Charles R. Blumenfeld  
Attorney for Port of Tacoma

William J. Barker  
Attorney for City of Tacoma

APPROVED, pursuant to 25 U.S.C. § 81:

United States Department of the Interior

SMTEXTRN\SMTPROP\BLAIRNAV.SUP

## Begin: Fisheries mitigation and enhancement agreement

FINAL

### PUYALLUP TRIBE AND PORT OF TACOMA FISHERIES MITIGATION AND ENHANCEMENT AGREEMENT FOR CERTAIN DEVELOPMENT PROJECTS

This is an agreement, entered into between the PUYALLUP TRIBE, of 2002 East 28th Street, Tacoma, Washington 98404, hereinafter referred to as "the Tribe", and the PORT OF TACOMA, of P. O. Box 1837, Tacoma, Washington 98401, hereinafter referred to as the "Port".

1. Statement of Intent. This agreement is intended to resolve certain outstanding disputes between the parties pertaining to the filling of Slip 2, construction of a new Terminal 3, associated dredging and fill, the extension of the Sea-Land pier on the Sitzcum Waterway by an additional length of 1,100 feet, and the construction of Pier 7D on the Sitzcum Waterway up to 700 feet. This agreement is intended to satisfy the mitigation and enhancement obligations of the Port for these projects under the Treaty of Medicine Creek, as it has been construed by the courts, and under the agreement between the Port and the Tribe dated April 22, 1983, a copy of which is attached hereto as exhibit "A" and by reference made a part hereof. This agreement was negotiated in order to allow the Port to proceed with the permitting and construction of the projects specified herein, and to provide certain opportunities to the Tribe, while protecting the parties' legal interests.

The parties to this agreement intend it to include.

- a) Complete mitigation of the projects which are the subject of this agreement, to the standards established by the appropriate Federal, State and local permitting agencies;
- b) An element of enhancement for each project as set forth below;
- c) A commitment by the Tribe that it will not interfere with the permitting and construction of:
  - (1) A marine terminal to be known as Port of Tacoma Terminal 3 and filling of Slip 2, together with surface construction activities, dredging and fill placement. These are described in the Corps of Engineers permit application attached as Exhibit "B".
  - (2) Extension of the Sea-Land pier on Sitzcum Waterway by an additional length of 1,100 feet, as shown on Exhibit "C".
  - (3) Extension of Pier 7D on Sitzcum Waterway to a length of up to 700 feet as shown on Exhibit "D" annexed hereto;
- d) Protection of the Tribe's treaty fishing rights and fishing stations, and other fisheries resource and habitat;
- e) Conveyance to the Tribe of interests in real property described on Exhibits "E" and "F" annexed hereto.
- f) Preservation of the parties' legal rights except as specifically modified herein; and
- g) An agreement to make a good faith attempt to negotiate a resolution of issues pertaining to the filling of the Milwaukee

Waterway, within 45 days of the issuance of the Corps permit for the construction of Terminal 3.

This paragraph is intended as a guide in construing the agreement. It is not intended to change any specific provision thereof.

2. Effective Date of Agreement. This Agreement shall be effective upon final ratification by the Port Commission and the Tribal Council on July 23, 1987. The Tribe, based on advice from its counsel, warrants to the Port that Bureau of Indian Affairs (BIA) approval of this Agreement is not required and, further, that the Tribe will abide by the requirements of this Agreement regarding the Port projects described in the paragraph above in the event the BIA should not approve any or all of this Agreement.

3. Obligations of the Port: The Port shall, upon the effective date of this Agreement, forthwith:

a) Execute a statutory warranty deed, conveying to the United States as Trustee for the Tribe those premises legally described on Exhibit "E" annexed hereto, free of encumbrances not of record as of July 9, 1987. The Tribe shall have possession rights as of July 23, 1987. The Port will deliver said deed to a title insurance company in Tacoma, Washington, no later than August 23, 1987, with instructions to deliver the same to the Tribe upon receipt by such escrow of the Corps of Engineers permit for the Terminal 3 project described in Exhibit "B". The Port will pay any costs associated with the transfer of this property, including a preliminary title report. The Port and the

Tribe shall each pay one-half of the cost of title insurance. The Port will support the Tribe's application to the Bureau of Indian Affairs to have such property accepted by the United States in trust status. In the event the United States should not accept the land in trust for the Tribe, the Port shall promptly execute a statutory warranty deed to the Tribe.

b) Execute in favor of the Tribe a lease commencing on the date of the Terminal 3 permit issuance and terminating 15 years thereafter. It shall consist of 19 contiguous acres fronting on Taylor Way, at a rental of \$1.00 per year. The premises are described on Exhibit "F" annexed hereto. The lease will be delivered to escrow on July 23, 1987 for immediate release to the Tribe upon the issuance of the Corps permit for construction of Terminal 3. Such lease shall provide that the Tribe is lessee, that subleases and collateral assignments of the lessee's interest are permitted, and that the property may be used for any lawful purpose.

c) Pay the sum of \$200,000.00, as follows:

\$135,000.00 in escrow on July 23, 1987, payable to the Tribe immediately upon issuance of the Corps permit for construction of Terminal 3; \$35,000.00 fifteen days thereafter, and \$30,000.00 thirty days thereafter. Provided, the payment of the second and third enumerated payments shall be conditioned upon continued participation by the Tribe in good faith negotiations. The Tribe represents that such monies will be applied one-half to business research and one-half to fisheries, hydrologic, environmental and technical research, and that none of such funds shall be applied

to legal research related to land claims. The Tribe will refund such \$200,000.00 to the Port solely from appropriations made by the Congress for Tribal land claims and Port development project negotiations, on receipt thereof by the Tribe. Said obligations to repay the \$200,000.00 shall be contingent on the lawful use of such appropriations for such repayment. Such refund shall be 50% of all such appropriations as received until it is paid in full.

d) Pay the sum of \$50,000.00 in escrow on July 23, 1987, payable to the Tribe immediately upon the issuance of the Corps permit for the construction of Terminal 3. The Tribe represents that such monies will be applied to business planning and development of the properties that are the subject of this agreement.

e) Be responsible for full mitigation for all projects as established by the appropriate Federal, State and local permitting agencies. The Port will commence and thereafter complete the mitigation element of each project in accordance with all permit conditions of the issued permit, to include prohibition of in-water work during the 90-day "fish window" period March 15-June 15 of any year.

- (1) Terminal 3 project mitigation shall be as described in the Port's Corps of Engineers permit application (Exhibit "B") and the final issued permit which shall be by reference incorporated herein when issued.
- (2) The need for timely completion of mitigation for Terminal 3 by March 15, 1988, except in the case of an Act of God, to meet the 1988 fisheries migration

season is recognized by establishing a liquidated damages payment by the Port to the Tribe in the amount of \$3,000 per day beginning March 16, 1988. The amount owed shall be proportional to the amount of the mitigation project within the intertidal habitat area (-10 ft. to +8 ft. MLLW) that is unfinished minus that habitat area not destroyed by filling or pier construction. Because the completion deadline of March 15, 1988 is established to meet an anticipated start of the migration season, a request by the Port to extend the beginning and/or end date of the "fish window" will not be unreasonably withheld by the Tribe if it can be established to the Tribe's satisfaction that scientific and technical information shows the migration to be late or otherwise not impacted.

- (3) Sea-Land pier extension mitigation shall be determined by the appropriate Federal, State and local permitting agencies during the permit process, at which time the Tribe shall have the right to provide comments and arguments concerning quantity, quality and location of the mitigation projects, provided such comments and arguments are not presented as formal objections to issuance of the permit. Under no circumstances shall mitigation for siad pier be less than replacement of intertidal habitat (-10 ft. to +8 ft. MLLW) covered by pier

construction using a 0.3 to 1.0 ratio. Both parties agree not to use said "floor" ratio in arguments to the permitting agencies and not to provide a copy or disclose the contents of this Agreement to the permitting agencies, unless requested by those agencies.

- (4) Terminal 7 pier extension mitigation shall be replacement of intertidal habitat (-10 ft. to +8 ft. MLLW) covered by pier construction using a 0.5 to 1.0 ratio.
- f) Provide full enhancement for projects as prescribed below.

(1) \$675,000 shall be paid in escrow on July 23, 1987, payable immediately upon issuance of the Corps permit for the construction of Terminal 3, to the Puyallup Tribe Fisheries Enhancement Trust Board, which shall be created by the Puyallup Tribe, for the enhancement element in the construction of Terminal 3. The funds shall be expended according to the recommendations of the Puyallup Tribal Fisheries biologists, provided, however, that the \$675,000 will be applied first to enhancement of the 24.5 acres described above. The remainder of the enhancement fund shall be expended for any fisheries enhancement projects recommended by Tribal biologists.

- (2) Enhancement for Sea-Land and Terminal 7 pier extensions shall be development of additional

intertidal habitat (-10 ft. to +8 ft. MLLW) at a ratio of 1/4 acre for every 1 acre of mitigation required by the issued permit or cash payment by the Port to the Puyallup Tribal Fisheries Enhancement Trust Board of an amount equal to 25% of the cost of mitigation required by the issued permit, at the Tribe's option. If the Tribe elects the additional habitat option, preference will be in the following order, if feasible (defined as up to 50% of the cost of mitigation required by the issued permit).

- (a) Additional area developed with the mitigation project, or
- (b) A separate area developed in the near vicinity on Port owned property, or
- (c) A separate area developed on other than Port owned property.

If there is no feasible site, the Tribe may opt for cash payment.

Since pier extensions are anticipated to be permitted and constructed in segments, e.g., 200 ft. followed by 600 ft., etc.; mitigation and enhancement will be undertaken in direct proportion to each segment as construction proceeds.

g) Provide full and immediate active lobbying and support for the Tribe's efforts to secure a \$500,000 Congressional funding package for negotiation of the Tribal land claims and Port development projects, including authorization of Port representatives to testify at hearings before Congress in

Washington, DC, if necessary. If there is no resolution of the filling of the Milwaukee Waterway in 45 days, the Port is released from any obligation to support this funding request.

h) Develop an employment training program for Puyallup Tribal members. This program shall be designed to train Puyallup Tribal members and effectively implement a program for upwardly mobile career education and career/job opportunities. As part of the good faith negotiations of the issues surrounding the filling of the Milwaukee Waterway, an attempt will be made to negotiate a specific number of jobs to be provided for Tribal members.

i) Navigation Issues: Recognizing that third parties must participate in any such agreement, the parties will endeavor to negotiate within 45 days an agreement resolving navigation issues in Commencement Bay. As part of such an agreement, when executed, the Port will contribute a one-time payment to a Tribal fund to be administered by the Tribal Fish Commission, which will be held in escrow. This fund shall be applied to property damage and associated lost income, if any, sustained by Puyallup Indian fishermen by negligence of vessels using Port marine terminals, for the purpose of permitting continued fishing during the fishing season. The Tribe represents that the fund will be repaid from funds collected from third parties for such damage.

For the purposes of this Agreement, nothing herein contained shall be deemed a commitment by the Port that monies referred to in Section 3 will be used for the purposes represented. No liability shall attach to the Port should such funds not be so

expended. The expenditure of such funds shall be solely within the control of the Tribe.

4. Obligations of the Tribe: The Tribe will, upon the effective date of this agreement, in consideration of the acts and undertakings herein made, acknowledge that the dredging, fill placement and construction of the facilities depicted on Exhibits "B" through "D" in substantially the form delineated thereon, in conjunction with the mitigation provided thereon or in this Agreement, will, for the purpose of this Agreement, be deemed not to violate any rights assured by the Puyallup Tribe under Article III of the Medicine Creek Treaty, or by any executive order, or by any prior contract or undertaking between the Tribe and the Port, as such rights have been or hereafter may be construed.

The Tribe agrees that it will not oppose construction of said projects' directly or indirectly, in any permit-granting process, or in any court proceeding except for breach of this Agreement. The acknowledgment contained in this paragraph may be received by any agency or court as an admission by the Tribe that for the purpose of this Agreement and said construction projects only, such projects shall not be deemed to violate any such rights, and it shall be conclusive on such issue. The Port agrees that said projects, if built, will conform to exhibits and the pier mitigation and enhancement requirements described above.

5. Milwaukee Waterway Negotiation: The parties recognize the importance of the proposed Sea-Land expansion onto the area presently occupied by a portion of the Milwaukee Waterway, the importance of the Milwaukee Waterway as a juvenile fisheries

area, and Sea-Land's need to fill a portion of that Waterway to permit such expansion. The parties agree to make a good faith attempt to negotiate a resolution of the issues surrounding the filling of the Waterway, within 45 day from the issuance of the Corps permit for the construction of Terminal 3.

6. Preservation of Claims and Defenses: Nothing herein shall waive or limit any rights of either party not provided for in this Agreement. Nothing herein contained shall waive any rights or preclude the Tribe from asserting any claim it may have or may hereafter make to equitable or legal title to any land or to any claims for trespass or other damages, including such claims on lands transferred to the Tribe or on lands filled by the Port under this agreement. Further, nothing herein shall waive, limit, modify, repeal or alter the Tribe's treaty, statutory, or any other rights to assert jurisdiction over its members, its territories, and occupants of its territories.

7. Availability of Documents: The Port will furnish the Tribe with all construction drawings, specifications, and other information in its possession and relevant to the mitigation of the projects described in section 3, within 7 days of their production or other availability. The Port will furnish the Tribe with all existing reports, appraisals, records or other data pertaining to the properties conveyed to the Tribe in this agreement. The Port will provide the Tribe with the nonproprietary portions of the Arthur Young and Company fish freeze feasibility study upon its completion.

8. Successors in Interest: The benefits of this Agreement shall be binding upon and inure to the successors and assignees of the parties, including tenants or customers of the Port.

9. Consent to Jurisdiction: Each party hereby consents to jurisdiction in the United States District Court for the Western District of Washington or in any court of competent jurisdiction in any action brought by either party to enforce any provision of this Agreement or to remedy a breach thereof. The parties recognize that the enforcement of the provisions of this Agreement are not cognizable in Tribal court.

10. Stipulation. This Agreement shall constitute a stipulation in any action brought by either party as provided above, and each party hereby consents to an order in the United States District Court for the Western District of Washington or in any court of competent jurisdiction incorporating its terms. The parties recognize that the enforcement of the provisions of this Agreement are not cognizable in Tribal court. In case of a breach by either party, it is contemplated that, in addition to other legal remedies, such stipulated order will be enforceable by contempt sanctions, including fine and imprisonment if appropriate.

11. Future Project Modification: The parties acknowledge that on the design and construction of the Terminal 3 project it may be necessary to make minor modifications having an effect on the fisheries habitat or mitigation, or it may be necessary to make minor modifications in the design of Sea-Land and Terminal 7-D pier construction as shown in exhibits attached to Corps of

Engineers future permit applications or issued permits. Such modifications may be made, subject to the following conditions:

a) That they be within the areas shown on Exhibits "B" through "D", or such additional areas as may be agreed to by the parties.

b) That plans and drawings of each such modification shall be submitted to the Tribe in sufficient time for Tribal review prior to any decision on said modifications.

c) That construction of each modification shall be subject to all of the provisions of the Agreement to the same extent as if drawings thereof had been annexed to the Agreement at the time of its execution.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers thereto authorized this 23 day of July, 1987.

PUYALLUP TRIBE

PORT OF TACOMA

By:

Bertha J. Turnipseed  
Chairperson

By:

Its President

By

Bill Sterud, Councilperson

By:

Lena Landry, Councilperson

By:

Henry John, Councilperson

STATE OF WASHINGTON )  
                      ) ss.  
County of Pierce   )

On this 23 day of July, 1987, personally appeared before me the undersigned, a Notary Public, in and for the State of Washington, duly commissioned and sworn, JOSEPH E. FAKER and JACK A. FABULICH, to me known to be the President and Secretary respectively of the PORT OF TACOMA, a municipal corporation, that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said municipal corporation.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

---

NOTARY PUBLIC in and for the  
State of Washington, residing  
at Tacoma

My commissions expires: \_\_\_\_\_

## Begin: Blair Waterway Property future development and Utility relocation

### AGREEMENT

THIS AGREEMENT, entered into this 16th day of February, 1993, is made by and between the Port of Tacoma ("Port") and Puyallup International, Inc. ("PII").

WHEREAS, PII and the Port have expressed an interest in preserving the ability to site a post-panamax type facility on Blair Waterway property PII shall receive pursuant to the "Puyallup Settlement Agreement", and

WHEREAS, the ability to site such a facility is dependent on proper utility relocation and the construction of bulkheads at widths to accommodate the C10 class of ships, and

WHEREAS, the Port is interested in participating in an agreed program with the City of Tacoma and PII to accomplish proper utility relocation and dredging for post-panamax use of the Blair Waterway, and

WHEREAS, PII has been delegated authority pursuant to the Property Management Ordinance by the Puyallup Tribal Council to enter into this agreement.

NOW, THEREFORE, to accomplish this purpose, and for the good and valuable considerations expressed herein, the Port and PII agree as follows:

#### 1. Location of Pierhead

The Port and PII understand and agree that in order to facilitate post-panamax capability it will be necessary to establish the pierhead line 188 ft. inward from the existing channel line. Exhibit "A" reflects the existing channel and pierhead lines, and also includes the proposed requirements to accommodate C10 class ships as envisioned in the Port's 2010 Plan.

#### 2. Utility Relocation

The City of Tacoma is planning to relocate the existing sewer line to accommodate Blair dredging. The Port and PII understand and agree that the proposed relocation to accommodate post-panamax facilities requires additional setbacks, thereby increasing the overall project cost. The additional cost is described in an outline dated July 13, 1992 and attached herein as Exhibit "B". It is understood

that the utility relocation shall be performed by the City of Tacoma.

3. Cost of Utility Relocation

PII shall, prior to the actual commencement of the sewer line relocation, share the increased cost of such utility relocation as described in Exhibit "B" as "alternative four" and shall pay to the Port no more than \$162,010.25 (twenty five percent of the estimated \$648,041.00 of additional costs) upon the transfer of the Blair Waterfront property to PII. The Port and PII further agree that if the additional project cost is less than \$648,041.00, then PII's amount shall be reduced according to the percentages as stated above.

POR T OF TACOMA,

By:

Donald G. Meyer for John J. Terpstra

Its Executive Director

Dated: Feb 16, 1993

PII REPRESENTATIVE:

By:

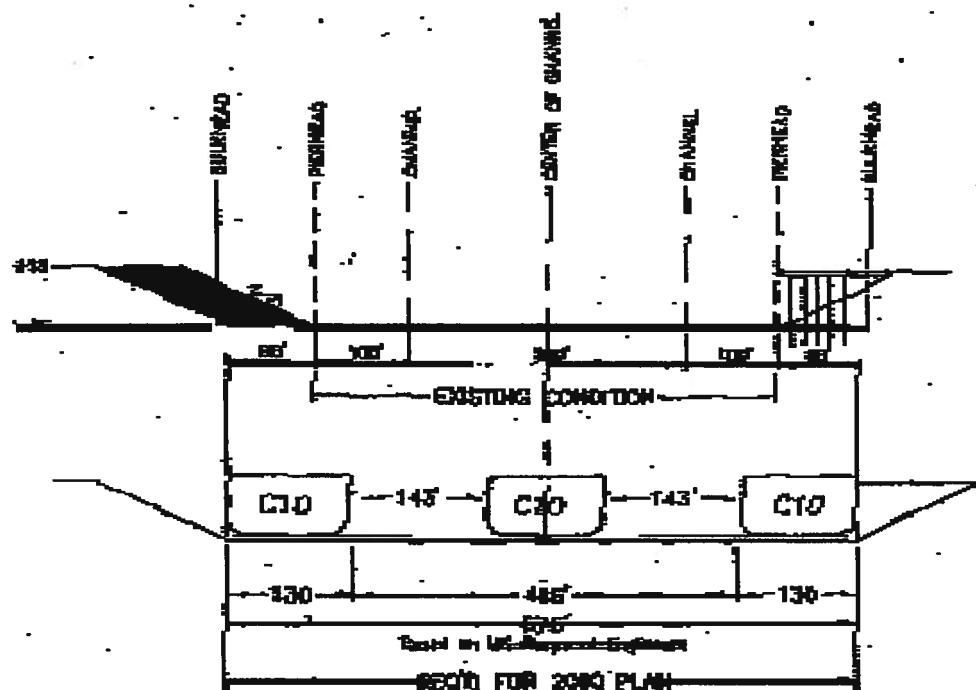
Its

Dated:

**EXHIBIT "A"**

### CHANNEL CROSS SECTIONS

SCALE: 1" = 200'



WINDING THROUGH THE FOREST, THE ROAD LEADS TO THE 20' DEEP HOLLOW.  
MOUNTAIN, 1000' ELEV. - 100' = 100 FT. DEEP HOLLOW, 20' = 20 FT.  
MOUNTAIN, 1000' ELEV. - 20' = 980 FT. DEEP HOLLOW, 20' = 20 FT.  
MOUNTAIN, 1000' ELEV. - 20' = 980 FT. DEEP HOLLOW, 20' = 20 FT.

SB 1477 - 2018 REGISTRATION OF THE STATE OF TEXAS

July 13, 1992

EXHIBIT B

Outline of  
Tribe/City/Port Obligations  
for Sanitary Sewer Relocation Project

Original project base cost: \$662,521.00

Relocate the sanitary sewer in the waterway to a greater depth between pierhead lines only, using standard dredging methods. Cost was estimated by the City and has Port concurrence, therefore, it is used as project base cost.

Cost Allocation:

Port on behalf of Tribe (Port to be compensated pursuant to Port/Tribe Blair Payment Agreement)	- 50,000.00
City on behalf of Tribe (City to be compensated when Tribe develops Blair Waterway property)	- 50,000.00
Total Port/City Responsibility	\$562,521.00
Port (22.22%) \$124,992.17 + 50,000	174,992.17
City (77.78%) \$437,528.83 + 50,000	487,528.83

ALTERNATIVE 4:

Estimate to relocate the sanitary sewer in the waterway to a greater depth, to the limits of the proposed future ship berthing areas using horizontal directional drilling from the upland to bore e' hole under the waterway and pull carrier pipe through.

Estimated Cost Allocation:

Alternate 4:	\$1,310,562.00
Less original project	- <u>662,521.00</u>
Total Port/Tribe responsibility	\$ 648,041.00
Port (75%)	<u>486,030.75</u>
Port on behalf of Tribe (Port to be compensated pursuant to Port/Tribe Blair Payment Agreement)	\$ 162,010.25

Begin:

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
ON BEHALF OF THE UNITED STATES	)	
ENVIRONMENTAL PROTECTION AGENCY	)	
Plaintiff,	)	
	)	CIVIL ACTION NO. C94-5648
v.	)	
	)	
THE PORT OF TACOMA	)	PUYALLUP LAND TRANSFER
	)	CONSENT DECREE
Defendant.	)	
	)	
	)	
	)	
THE PUYALLUP TRIBE OF INDIANS	)	
	)	
	)	
Intervenor.	)	
	)	

---

TABLE OF CONTENTS

I.	BACKGROUND .....	3
II.	JURISDICTION .....	9
III.	PARTIES BOUND .....	10
IV.	DEFINITIONS .....	11
V.	GENERAL PROVISIONS .....	17
VI.	PERFORMANCE OF THE WORK .....	20
VII.	QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS .....	31
VIII.	ACCESS .....	31
IX.	REPORTING RELEASES .....	33
X.	PROJECT COORDINATORS .....	34
XI.	EMERGENCY RESPONSE .....	35
XII.	REIMBURSEMENT OF RESPONSE COSTS .....	36
XIII.	INDEMNIFICATION .....	39
XIV.	DISPUTE RESOLUTION .....	41
XV.	COVENANTS BY THE PORT AND THE TRIBE .....	46
XVI.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION .....	47
XVII.	NO ACTION ASSURANCES .....	49
XVIII.	ACCESS TO INFORMATION; RETENTION OF RECORDS .....	52
XIX.	NOTICES AND SUBMISSIONS .....	54
XX.	EFFECTIVE DATE .....	55
XXI.	RETENTION OF JURISDICTION .....	55
XXII.	APPENDICES .....	56
XXIII.	MODIFICATION .....	56
XXIV.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT .....	57
XXV.	SIGNATORIES/SERVICE .....	57

## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. This action is also brought in reference to the August 27, 1988 Puyallup Land Settlement Agreement (the "Settlement Agreement"), which was incorporated into federal law by the Puyallup Tribe of Indians Settlement Act of 1989. 25 U.S.C. § 1773 ("the Settlement Act").

B. The United States in its complaint seeks, *inter alia*:

(1) reimbursement by the Port of Tacoma of Past and Future Response Costs incurred by EPA and the Department of Justice for response actions related to implementation of the Settlement Agreement, involving six properties (the "Settlement Properties") which are located within the boundaries of the Commencement Bay Nearshore/Tideflats Superfund Site ("the CB/NT Site") in Tacoma, Pierce County, Washington, together with accrued interest; and (2) performance of response actions, including notification requirements, by the Port of Tacoma ("the Port"), if necessary, consistent with the Settlement Act, the Settlement Agreement, the Record of Decision for the CB/NT Site, the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, as amended, and this Consent Decree and its Appendices.

1       C. On August 27, 1988, the Puyallup Land Settlement  
2 Agreement was signed by, among others, the United States, the  
3 Puyallup Tribe Indians ("the Tribe"), the Port, and the State of  
4 Washington. The Settlement Agreement provides that the Port  
5 will transfer to the United States, in trust for the Tribe, six  
6 (6) parcels of property, which are defined in this Consent  
7 Decree as the "Settlement Properties". The Settlement Properties  
8 subject to this Consent Decree are the Inner Hylebos Property,  
9 Upper Hylebos Property, Taylor Way Property, East-West Road  
10 Property, Blair Waterway Property, and Blair Backup Property.  
11 The Settlement Agreement provides further that prior to transfer  
12 of the Settlement Properties, the Port will perform cleanup  
13 actions, as necessary, in order to assure that such properties  
14 comply with applicable federal, tribal, and state contamination  
15 law and can be used for commercial and industrial purposes.

16       D. In the Puyallup Tribe of Indians Settlement Act of  
17 1989, 25 U.S.C. § 1773, the United States formally adopted the  
18 terms of the Settlement Agreement and its Technical Appendices  
19 into law. The Settlement Act provides that the transfer of the  
20 Settlement Properties is to be carried out in accordance with  
21 the Settlement Agreement. Under the Settlement Act, the Tribe  
22 is not to be liable for the cleanup costs or in any other  
23 manner, for contamination on Settlement Properties except any  
24 contamination caused by the Tribe's activities after conveyance  
25 of the Settlement Properties to the United States, to be held in  
26 Trust for the Tribe. 25 U.S.C. § 1773b(b)(2).

27

1       E. To implement the Settlement Act's provisions regarding  
2 compliance with applicable federal and state law, EPA, the  
3 Washington State Department of Ecology ("Ecology"), the Tribe,  
4 and the Port entered into a Memorandum of Agreement ("MOA")  
5 effective March 21, 1990. The MOA provides, in part, that  
6 implementation of the cleanup activities under the Settlement  
7 Agreement will occur under EPA and Ecology oversight, and that  
8 EPA will oversee - implementation of approved cleanup plans  
9 under CERCLA enforcement authorities.

10      F. Each of the environmental investigations conducted at  
11 each of the Settlement Properties, followed the steps outlined  
12 in the MOA, as follows:

13      1. Results of an environmental audit are summarized in a  
14 Phase I Environmental Investigation Report.

15      2. Based on the results of the Phase I report, a Phase II  
16 Environmental Investigation Sampling and Analysis Plan ("Work  
17 Plan") was prepared by the Port to guide the environmental  
18 investigation and evaluation at each Settlement Property. The  
19 Work Plan was reviewed and approved by EPA, Ecology, and the  
20 Tribe.

21      3. In accordance with the Work Plan for each Settlement  
22 Property, preliminary site investigations and sampling were  
23 conducted from December 1989 through March 1990. Data were  
24 evaluated and results were summarized in a Preliminary  
25 Investigation Report. The Report was reviewed by EPA, Ecology,  
26 and the Tribe, and modified in response to their comments.

27      4. As determined necessary, the Port prepared additional  
Sampling and Analysis Plans to complete environmental  
investigations. The additional exploration and sampling were  
accomplished through July 1991. Investigation results were  
presented in a Draft Final Investigation Report, which was  
reviewed by EPA, Ecology, and the Tribe, and modified in  
response to their comments.

1       5. A Final Investigation Report presented all  
2 investigation data gathered at each Settlement Property; an  
3 evaluation of site conditions accomplished by comparing soil,  
4 sediment, and water quality data to federal and state  
5 environmental criteria and regulations; a summary of any cleanup  
6 actions completed at each Settlement Property; and  
7 recommendations for any necessary cleanup actions at each  
8 Settlement Property. EPA issued an administrative order, EPA  
9 Docket No. 1091-02-14-106, to govern a short-term removal action  
10 at the Inner Hylebos Property to meet the cleanup requirements.  
11 The Final Investigation Report for each Settlement Property was  
12 reviewed and approved by EPA, Ecology, and the Tribe. Based on  
13 results presented in the Final Investigation Reports, EPA and  
14 Ecology determined that cleanup actions would be necessary for  
15 two of the Settlement Properties (Blair Waterway Property and  
16 Blair Backup Property).

17       6. An Analysis of Alternatives Report was prepared by the  
18 Port for two of the Settlement Properties (Blair Backup  
19 Property, Blair Waterway Property). The Analysis of Alternatives  
20 Report presented an evaluation of alternative cleanup actions  
21 and an analysis of applicable or relevant and appropriate  
22 requirements (ARARs), and it identified a preferred cleanup  
23 alternative. The Analysis of Alternatives Report was subject to  
24 a 30-day public comment period. The Analysis of Alternatives  
25 Report was reviewed and approved by EPA, Ecology, and the Tribe.

26       7. Cleanup Plans were prepared by the Port for two of the  
27 Settlement Properties (Blair Backup Property, Blair Waterway  
Property). The Cleanup Plans incorporated the preferred cleanup  
alternative, as modified for community and tribal acceptance,  
and included requirements to conduct and to operate and maintain  
the cleanup measures, and to monitor the effectiveness of those  
cleanup actions. The Cleanup Plans were approved by EPA,  
Ecology, and the Tribe, and were implemented by the Port under  
an EPA Administrative Order on Consent, EPA Docket No. 1093-03-  
05-106.

28       G. Attached to this Consent Decree are Appendices A through  
29 F, which describe the documents prepared for the investigations,  
30 the results of the investigations and cleanups, and all  
31 Institutional Controls that have been established for each of the  
32 six (6) Settlement Properties.

33       H. The Port and the Tribe have executed an Implementing  
34 Agreement for the purpose of contractually setting forth the

1 manner and conditions for the conveyance of the Settlement  
2 Properties to the Tribe. The Implementing Agreement includes a  
3 separate Addendum for each Settlement Property, which describes  
4 specific environmental conditions, institutional controls, use  
5 restrictions, and other agreements between the Port and the  
6 Tribe relating to each Settlement Property. The Implementing  
7 Agreement is attached as Appendix G to this Consent Decree.

8 I. Pursuant to the MOA, EPA has issued two Administrative  
9 Orders on Consent (the "Orders") to the Port to facilitate  
10 implementation of the Settlement Agreement and the Implementing  
11 Agreement. On July 7, 1992, EPA issued to the Port the  
12 "Administrative Order on Consent for Certain of the Properties  
13 to be Transferred under the Puyallup Tribe of Indians Settlement  
14 Act of 1989," U.S. EPA Docket No. 1092-06-01-104/106, which  
15 among other things: (1) addressed the Port's continuing  
16 responsibilities; (2) defined institutional controls specific to  
17 each of four of the Settlement Properties (the Inner Hylebos  
18 Property, the Upper Hylebos Property, the East-West Road  
19 Property, and the Taylor Way Property); and (3) provided for  
20 reimbursement of EPA's oversight costs. On March 9, 1993, EPA  
21 issued to the Port the "Administrative Order on Consent for a  
22 Removal Action at the Blair Waterway Property and the Blair  
23 Backup Property," U.S. EPA Docket No. 1093-03-05-106, which  
24 among other things: (1) established the Port's cleanup  
25 requirements; (2) addressed the Port's continuing  
26 responsibilities; (3) defined the institutional controls at the  
27 Blair Waterway Property and the Blair Backup Property; and (4)

1 provided for reimbursement of EPA's future oversight costs. The  
2 Orders provide that the duties of the Port under the Orders  
3 shall be satisfied upon the entry of this Consent Decree, which  
4 covers the matters addressed in, and supersedes, those Orders.

5 J. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,  
6 EPA placed the CB/NT Site on the National Priorities List, set  
7 forth at 40 C.F.R. Part 300, Appendix B, by publication in the  
8 Federal Register on September 8, 1983, 48 Fed. Reg. 40,658. The  
9 CB/NT Site is located in Tacoma, Washington, at the southern end  
10 of the main basin of Puget Sound. The CB/NT Site includes, along  
11 with other land and marine features, 10-12 square miles of  
12 shallow water, shoreline, and adjacent land in the industrial  
13 tideflats area of an active commercial seaport. The Settlement  
14 Properties are located within the boundaries of the CB/NT Site.

15 K. The decision by EPA on the remedial action to be  
16 implemented at the CB/NT Site is embodied in a final Record of  
17 Decision ("ROD"), executed on September 30, 1989, on which the  
18 State and the Puyallup Tribe have given their concurrence. The  
19 ROD includes EPA's explanation for any significant differences  
20 between the final plan and the proposed plan as well as a  
21 responsiveness summary to the public comments. Notice of the  
22 final plan was published in accordance with Section 117(b) of  
23 CERCLA, 42 U.S.C. § 9617(b).

24 L. The ROD addresses eight Problem Areas of contaminated  
25 sediments and sources of hazardous substances contamination. Of  
26 the Settlement Properties addressed by this Consent Decree, the  
27 Inner Hylebos Property and the Upper Hylebos Property include

1 marine sediments associated with Problem Areas that are being  
2 remediated in accordance with the ROD. This Consent Decree  
3 provides, in part, for the Port to remain responsible for  
4 undertaking any Remedial Action involving Historic Contamination  
5 of marine sediments that are located on the Inner Hylebos  
6 Property and the Upper Hylebos Property specified by EPA as  
7 necessary to implement the CB/NT ROD, which will be conducted  
8 under a separate action.

9 M. The Parties recognize, and the Court by entering this  
10 Consent Decree finds, that this Consent Decree has been  
11 negotiated by the Parties in good faith and implementation of  
12 this Consent Decree will promote implementation of the  
13 Settlement Agreement and the Settlement Act, will maintain  
14 protection of human health, welfare and the environment from  
15 Historic Contamination at the Settlement Properties, and will  
16 avoid prolonged and complicated litigation between the Parties,  
17 and that this Consent Decree is fair, reasonable, and in the  
18 public interest.

19 NOW, THEREFORE, it is hereby Ordered, Adjudged, and  
20 Decreed:

21 II. JURISDICTION

22 1. This Court has jurisdiction over the subject matter of  
23 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42  
24 U.S.C. §§ 9606, 9607, and 9613 (b). This Court also has  
25 personal jurisdiction over the Port of Tacoma. Upon the Court  
26 granting its Complaint in Intervention, this Court also will  
27 have personal jurisdiction over the Puyallup Tribe of Indians

1 with regard to issues arising from the Settlement Agreement,  
2 pursuant to 25 U.S.C. § 1773. Solely for the purposes of this  
3 Consent Decree, the underlying Complaint, and the Complaint in  
4 Intervention by the Puyallup Tribe, the Port of Tacoma waives  
5 all objections and defenses that it may have to jurisdiction of  
6 the Court or to venue in this District. The United States and  
7 the Port of Tacoma shall not challenge the terms of this Consent  
8 Decree, the standing of the Puyallup Tribe to intervene, or this  
9 Court's jurisdiction to grant the Tribe's intervention and to  
10 enter and enforce this Consent Decree.

### III. PARTIES BOUND

12        2. This Consent Decree applies to and is binding upon the  
13        United States, the Puyallup Tribe of Indians, and the Port of  
14        Tacoma. This Consent Decree also applies to and is binding upon  
15        the employees, agents, successors, assigns, officers, directors,  
16        and principals of the Puyallup Tribe and the Port of Tacoma. Any  
17        change in ownership or corporate status of the Port of Tacoma  
18        including, but not limited to, any transfer of assets or real or  
19        personal property shall in no way alter the Port of Tacoma's  
20        responsibilities under this Consent Decree. The obligations of  
21        the Port of Tacoma or the Puyallup Tribe with respect to the  
22        Institutional Controls described in Section VI and the  
23        Appendices of this Consent Decree, and to access under Paragraph  
24        18, shall run with the land and shall be binding upon any  
25        Successors-in-Title, as provided below in Paragraph 18.

26           3. The Port shall provide a copy of this Consent Decree to  
27           each contractor hired to perform activities required under or

1 pursuant to this Consent Decree, and shall condition all  
2 contracts entered into hereunder upon performance of any  
3 activity in conformity with the terms of this Consent Decree.  
4 The Port or the Tribe shall require their contractors to provide  
5 written notice of the Consent Decree to all subcontractors hired  
6 to perform any portion of the activities in areas restricted by  
7 Institutional Controls that limit either subsurface intrusive  
8 activities or activities in the Capped or Covered Areas of the  
9 Blair Backup Property. The Port and the Tribe shall nonetheless  
10 be responsible for ensuring that their contractors and  
11 subcontractors perform the activities contemplated herein in  
12 accordance with this Consent Decree. With regard to activities  
13 undertaken pursuant to this Consent Decree, the Port shall be  
14 deemed to be in a contractual relationship with each contractor  
15 and subcontractor for the purpose of Section 107(b)(3) of  
16 CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

18           4. Unless otherwise expressly provided herein, terms used  
19        in this Consent Decree which are defined in CERCLA or in  
20        regulations promulgated under CERCLA shall have the meaning  
21        assigned to them in CERCLA or in such regulations. Whenever  
22        terms listed below are used in this Consent Decree or in the  
23        appendices attached hereto and incorporated hereunder, the  
24        following definitions shall apply:

"Commencement Bay Nearshore/Tideflats Superfund Site" ("CB/NT Site") means the entire Commencement Bay Nearshore/Tideflats Superfund Site, which is located in Tacoma,

1 Washington and is described in the Record of Decision, issued  
2 September 30, 1989.

3 "Capped or Covered Areas of the Blair Backup Property"  
4 shall mean an area approximately 17 acres in size located on the  
5 Blair Backup Property that is covered with either an asphalt cap  
6 or a sand and gravel cover. The surveyed boundaries of the  
7 Capped or Covered Areas of the Blair Backup Property are shown  
8 in Figure F-2 of Appendix F to this Consent Decree.

9 "CERCLA" shall mean the Comprehensive Environmental  
10 Response, Compensation, and Liability Act of 1980, as amended,  
11 42 U.S.C. §§ 9601 et seq.

12 "Clean Water Act" shall mean the Federal Water Pollution  
13 Control Act, as amended, 33 U.S.C. §§ 1251 et seq.

14 "Consent Decree" shall mean this Decree and all appendices  
15 attached hereto and incorporated into this Consent Decree:  
16 "Appendix A" is the Inner Hylebos Property Summary; "Appendix B"  
17 is the Upper Hylebos Property Summary; "Appendix C" is the  
18 Taylor Way Property Summary; "Appendix D" is the East-West Road  
19 Property Summary; "Appendix E" is the Blair Waterway Property  
20 Summary; "Appendix F" is the Blair Backup Property Summary;  
21 "Appendix G" is the Implementing Agreement; "Appendix H" is the  
22 Memorandum of Agreement; "Appendix I" is the CB/NT Record of  
23 Decision; and "Appendix J" is the Settlement Agreement. In the  
24 event of conflict between this Decree and any appendix, this  
25 Decree shall control.

26 "Day" shall mean a calendar day unless expressly stated to  
27 be a working day. "Working day" shall mean a day other than a

1 Saturday, Sunday, or Federal holiday. In computing any period of  
2 time under this Consent Decree, where the last day would fall on  
3 a Saturday, Sunday, or Federal holiday, the period shall run  
4 until the close of business of the next working day.

5 "EPA" shall mean the United States Environmental Protection  
6 Agency and any successor departments or agencies of the United  
7 States.

8 "Future Response Costs" shall mean all costs, including,  
9 but not limited to, direct and indirect costs, that the United  
10 States incurs in reviewing or developing plans, reports and  
11 other items pursuant to this Consent Decree, or otherwise  
12 implementing, overseeing, or enforcing this Consent Decree,  
13 including, but not limited to, payroll costs, contractor costs,  
14 travel costs, laboratory costs, the costs incurred pursuant to  
15 Sections VI, VII, VIII (including, but not limited to, attorneys  
16 fees and the amount of just compensation), and Section XI.  
17 Future Response Costs shall also include all costs, including  
18 direct and indirect costs, paid by the United States in  
19 connection with the Settlement Properties between September 1,  
20 1993 and the effective date of this Consent Decree.

21 "Hazardous Substance" shall have the meaning as defined in  
22 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23 "Historic Contamination" means any contamination that  
24 remains on, in, under or about any of the Settlement Properties  
25 as of the date that title to such property was or is conveyed to  
26 the United States in trust for the Tribe.

1        "Implementing Agreement" means that written agreement and  
2 all addenda and exhibits incorporated therein by the Port and  
3 the Tribe to implement the transfer of Settlement Properties,  
4 included as Appendix G to this Consent Decree, and any revisions  
5 to that written agreement and all addenda that may be agreed  
6 upon by the Port and the Tribe. The Implementing Agreement was  
7 approved by the Tribal Council of the Puyallup Indian Tribe on  
8 February 27, 1992, and subsequently approved by the  
9 Commissioners of the Port of Tacoma on March 5, 1992.

10       "Institutional Controls" means land use restrictions and  
11 other regulations, ordinances, covenants, and controls developed  
12 pursuant to the Settlement Agreement, the MOA, the Implementing  
13 Agreement, or this Consent Decree, as set forth in Appendices A  
14 through F to this Consent Decree for each of the Settlement  
15 Properties, and as may be modified in the future pursuant to  
16 this Consent Decree, to restrict certain defined uses of the  
17 Settlement Properties as necessary to maintain the integrity of  
18 cleanup measures undertaken on the Settlement Properties, to  
19 prevent the unauthorized disturbance of any cleanup actions,  
20 measures, or structures implemented at the Settlement  
21 Properties, and to govern the performance of any future  
22 activities at the Settlement Properties.

23       "Memorandum of Agreement" or "MOA" means a Memorandum of  
24       Agreement effective March 21, 1990, among the Puyallup  
25       Tribe, the Port of Tacoma, the Washington Department of Ecology,  
26       and EPA, which established a process for investigating the  
27

1 Settlement Properties and implementing cleanup plans, and is  
2 included as Appendix H to this Consent Decree.

3 "National Contingency Plan" or "NCP" shall mean the  
4 National Oil and Hazardous Substances Pollution Contingency Plan  
5 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. §  
6 9605, codified at 40 C.F.R. Part 300, including, but not limited  
7 to, any amendments thereto.

8 "Paragraph" shall mean a portion of this Consent Decree  
9 identified by an arabic numeral or an upper case letter.

10 "Parties" shall mean the United States, the Puyallup Tribe,  
11 and the Port of Tacoma.

12 "Party in Privity with the Tribe" shall mean any party who  
13 falls within one or more of the following categories:

14 (i) successors, assigns, lessees, lenders, lender's  
15 assignees, partners, investors, mortgagees, contractors, and  
16 subcontractors of the Tribe with regard to one or more of the  
17 Settlement Properties;

18 (ii) parties holding legal, contractual, or equitable  
19 interests in one or more of the Settlement Properties; or

20 (iii) parties who, due to the presence of Historic  
21 Contamination, may be considered to be an owner and operator  
22 with regard to one or more of the Settlement Properties, as  
23 defined in either CERCLA or the Model Toxics Control Act  
24 (Chapter 70.105D RCW), as amended, or other applicable  
25 contamination laws.

26 "Past Response Costs" shall mean all costs, including, but  
27 not limited to, direct and indirect costs and interest, that the

1       United States incurred and paid with regard to the Settlement  
2       Properties prior to September 1, 1993.

3           "Port of Tacoma" or the "the Port" shall mean the Port of  
4       Tacoma.

5           "Puyallup Tribe of Indians" or "Puyallup Tribe" or "the  
6       Tribe" shall mean the Puyallup Tribe of Indians, a federally  
7       recognized Indian tribe.

8           "RCRA" shall mean the Solid Waste Disposal Act, as amended,  
9       42 U.S.C. §§ 6901 et seq.

10          "Record of Decision" or "ROD" shall mean the EPA Record of  
11       Decision relating to the Commencement Bay Nearshore/ Tideflats  
12       Site signed on September 30, 1989, by the Regional  
13       Administrator, EPA Region 10, and all attachments thereto, and  
14       is included as Appendix to this Consent Decree.

15          "Remedial Action" shall mean those activities, other than  
16       those required by this Consent Decree, to be undertaken by a  
17       separate action to implement the CBtNT ROD at the Inner Hylebos  
18       Property and the Upper Hylebos Property.

19          "Remedial Design" shall mean those activities to be  
20       undertaken to develop the final plans and specifications for the  
21       Remedial Action to implement the ROD.

22          "Section" shall mean a portion of this Consent Decree  
23       identified by a roman numeral.

24          "Settlement Act" shall mean the Puyallup Tribe of Indians  
25       Settlement Act of 1989, June 21, 1989, P.L. 101-41, 103 Stat.  
26       83, 25 U.S.C. § 1773.

1           "Settlement Agreement" shall mean the document entitled  
2        "Agreement between the Puyallup Tribe of Indians, Local  
3        Governments in Pierce County, the State of Washington, the  
4        United States of America, and certain private property owners",  
5        dated August 27, 1988, and its Technical Appendices, as  
6        incorporated into federal law by the Settlement Act, and is  
7        included as Appendix J to this Consent Decree.

8           "Settlement Properties" shall mean the six (6) properties  
9        identified by the Settlement Agreement to be transferred from  
10       the Port of Tacoma to the United States to be held in trust for  
11       the Tribe. The Settlement Properties include: the Inner  
12       Hylebos Property; the Upper Hylebos Property; the Taylor Way  
13       Property; the East-West Road Property; the Blair Waterway  
14       Property; and the Blair Backup Property.

15       "Settling Defendant" shall mean the Port of Tacoma.

16       "Site" or the "CB/NT Site" shall mean the Commencement Bay  
17       Nearshore/Tideflats Superfund Site, located in the City of  
18       Tacoma, Pierce County, Washington, at the southern end of the  
19       main basin of Puget Sound.

20       "United States" shall mean the United States of America,  
21       including, but not limited to, EPA, the Bureau of Indian  
22       Affairs, and the U.S. Department of Justice.

23       "Waste Material" shall mean (1) any "hazardous substance"  
24       under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any  
25       pollutant or contaminant under Section 101(33), 42 U.S.C. §  
26       9601(33); and (3) any "solid waste" under Section 1004(27) of  
27       RCRA, 42 U.S.C. § 6903(27).

1        "Work" shall mean all activities the Port or the Tribe is  
2 required to perform under this Consent Decree, except those  
3 required by Section XVIII (Retention of Records).

4                    V. GENERAL PROVISIONS

5        5. Objectives of the Parties. In entering into this  
6 Consent Decree, the objectives of the Parties are: (a) To  
7 assist the Puyallup Tribe to enjoy the benefits of the  
8 Settlement Act by facilitating implementation of the Settlement  
9 Agreement; and (b) to protect the public health and welfare and  
10 the environment by implementing response actions for the  
11 Settlement Properties consistent with this Consent Decree and  
12 its appendices, the Settlement Act, the Settlement Agreement,  
13 and the ROD for the CB/NT Site.

14        6. Commitments by the Port of Tacoma.

15        a. The Port of Tacoma agrees to undertake all actions,  
16 including operation and maintenance and long-term monitoring, in  
17 accordance with this Consent Decree, and all plans, standards,  
18 specifications and schedules set forth in or developed and  
19 approved by EPA pursuant to this Consent Decree.

20        b. The Port agrees that it shall continue to remain  
21 liable, subject to and without waiving any rights provided in  
22 Paragraphs 41 and 42, for the cleanup and/or remediation of any  
23 Historic Contamination after the Settlement Properties have been  
24 conveyed to the United States in trust for the Tribe. The Port  
25 shall be responsible for monitoring, testing or other ongoing or  
26 future requirements regarding Historic Contamination that either  
27 have been or may be in the future imposed by EPA on the Port.

1 The Port agrees that it will be liable jointly and severally to  
2 the United States, as an owner or operator under Sections  
3 107(a)(1) and/or 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(1)  
4 and (2), with regard to Historic Contamination on each such  
5 Settlement Property. The Port agrees that the monetary ceiling  
6 in paragraph C.11.g. of the Settlement Agreement (Appendix J) is  
7 not a defense to any future United States enforcement actions  
8 initiated pursuant to CERCLA against the Port for Historic  
9 Contamination on Settlement Properties. With regard to the  
10 Inner Hylebos and Upper Hylebos Properties, the Port agrees that  
11 it shall be liable for undertaking any Remedial Action involving  
12 Historic Contamination of marine 28 sediments specified by EPA  
13 in a separate action as necessary to implement the CB/NT ROD.

14 c. The Port agrees to reimburse the United States for Past  
15 Response Costs and Future Response Costs as provided in this  
16 Consent Decree.

17 7. Commitments by the Puyallup Tribe. The Puyallup Tribe  
18 agrees to comply with all applicable Institutional Controls and  
19 any other applicable limitations set forth in or required  
20 pursuant to this Consent Decree, and to assure that its  
21 activities are conducted in accordance with this Consent Decree.  
22 Moreover, under the Settlement Act, the Tribe is not to be  
23 liable for the cleanup costs or in any other manner, for  
24 contamination on Settlement Properties except any contamination  
25 caused by the Tribe's activities after conveyance of the  
26 Settlement Properties to the United States, to be held in Trust  
27 for the Tribe, under the terms of the Settlement Agreement.

1 Furthermore, the Puyallup Tribe will ensure that all activities  
2 undertaken on the Settlement Properties by a Party in Privity  
3 with the Tribe are conducted in accordance with this Consent  
4 Decree and all applicable Institutional Controls and any other  
5 applicable limitations set forth in or required pursuant to this  
6 Consent Decree. The Tribe shall provide copies of Paragraphs 11  
7 and 12 and the applicable Appendix A through F to this Consent  
8 Decree to each entity directly involved with an activity with  
9 respect to the Settlement Properties. The Tribe agrees to  
10 inform each person who may be a Party in Privity with the Tribe  
11 of this Consent Decree. The Tribe agrees to inform EPA of known  
12 noncompliance with an Institutional Control that has been  
13 imposed under this Consent Decree.

14       8. Compliance With Applicable Law. All activities  
15 undertaken by the Port and the Tribe pursuant to this Consent  
16 Decree shall be performed in accordance with the requirements of  
17 all applicable federal, tribal and state laws and regulations.  
18 The Port and the Tribe must also comply with all applicable or  
19 relevant and appropriate requirements of all federal, tribal and  
20 state environmental laws as set forth in the ROD and documents  
21 approved . by EPA pursuant to the Memorandum of Agreement, and  
22 in documents approved by EPA pursuant to this Consent Decree.  
23 The activities conducted pursuant to this Consent Decree, if  
24 approved by EPA, shall be considered to be consistent with the  
25 NCP.

26       VI. PERFORMANCE OF THE WORK  
27

1           9. The Port and the Tribe shall meet the conditions,  
2 comply with the Institutional Controls, and take the precautions  
3 that are specified for each property in Appendices A through F  
4 of this Consent Decree.

5           10. The Port shall be responsible for monitoring, testing  
6 or other ongoing or future requirements regarding Historic  
7 Contamination at each Settlement Property to the extent provided  
8 for in this Consent Decree. The Port and the Tribe agree to  
9 comply with the terms of the Implementing Agreement and to keep  
10 EPA informed of activities undertaken pursuant to the  
11 Implementing Agreement by taking the measures required under  
12 Paragraphs 11 and 12. All notices or reports to be provided by  
13 the Tribe to the Port under this Consent Decree and the  
14 Implementing Agreement shall also be provided to EPA, as  
15 provided under Section XIX, and all notices or reports to be  
16 provided by the Port to EPA under this Consent Decree shall also  
17 be provided by the Port to the Tribe.

18           11. Notice of a Release or Threat of a Release

19           a. The Tribe shall provide written notice to the Port and  
20 EPA within twenty-four (24) hours of the Tribe's discovery of a  
21 release or threat of a release of a hazardous substance on a  
22 Settlement Property, including a release or threat of a release  
23 involving Historic Contamination where: (1) In the exercise of  
24 its best professional judgment, the Tribe determines that the  
25 release or threatened release poses a substantial threat to  
26 human health and/or the environment; (2) the Tribe becomes aware  
27 that the asphalt cap or the sand and gravel cover of the Capped

1 or Covered Areas of the Blair Backup Property have been or are  
2 likely to be adversely affected; or (3) the Tribe is required to  
3 report the release or threatened release under Section 103 of  
4 CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency  
5 Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. §  
6 11004. Compliance with this paragraph shall not relieve any  
7 party of any notification requirements of an applicable federal,  
8 tribal or state law or regulation.

9       b. Upon being notified by the Tribe of a discovery of a  
10 release or the threat of a release of a hazardous substance on  
11 any of the Settlement Properties, the Port shall provide written  
12 notification to EPA within 5 calendar days of receiving the  
13 notification from the Tribe. To the extent known, the written  
14 notification by the Port shall provide the results of the Port's  
15 investigation of the release or threat of a release, including  
16 the property name; the specific source, type and location of the  
17 hazardous substance(s); circumstances of the release and the  
18 discovery, including but not limited to sampling results, any  
19 potential imminent and substantial threat to human health and  
20 the environment, justifications for decisions pertaining to site  
21 activities, and notification on whether the release is suspected  
22 to involve Historic Contamination; and any response actions  
23 planned, completed, or underway. Compliance with this Paragraph  
24 shall not relieve any party of any notification requirements of  
25 an applicable federal, tribal or state law or regulation.

26       c. Within 65 days of the Port receiving notification from  
27 the Tribe pursuant to Paragraph 11.a., the Port shall consult

1 with the Tribe and submit to EPA a written report that shall  
2 describe the nature of the release and include complete  
3 documentation for all items listed in Paragraph 11.b above. The  
4 written report shall also identify whether the Port and/or Tribe  
5 have any response actions planned, and the report shall include  
6 a schedule for conducting the response action, for approval by  
7 EPA. The report shall include comparisons to applicable state,  
8 tribal, and federal criteria to be used as screening or cleanup  
9 criteria. The Port shall include in the report a description of  
10 the Tribe's position on the nature of the release and of the  
11 need for a response action, and will identify whether the Port  
12 or the Tribe will perform the response action. EPA may  
13 determine that the proposed response action shall be conducted  
14 pursuant to an administrative order issued under CERCLA, in  
15 which case the requirements of the administrative order shall  
16 take the place of the remaining requirements in this Paragraph  
17 11.

18 d. Within 90 days of the Port completing any necessary  
19 response actions, the Port shall submit a Completion Report to  
20 EPA and the Tribe describing the response action at the  
21 property. The Completion Report shall include response actions  
22 and compliance monitoring planned or underway, and the Tribe's  
23 activities in and concurrence (or nonconcurrence) with the  
24 response action. The Port shall be responsible for coordinating  
25 response actions with the Tribe, and the Port shall submit the  
26 Tribe's written concurrence as part of the Completion Report.

27

1                   e. Within 90 days of the Tribe completing any necessary  
2 response actions, the Tribe shall submit a Completion Report to  
3 EPA and the Port, describing the response action at the  
4 property. The Completion Report shall include response actions  
5 and compliance monitoring planned or underway, and the Tribe's  
6 activities in and concurrence with the response action.

7                   f. If the response action undertaken by the Port or the  
8 Tribe is completed within 90 days of the Port or the Tribe  
9 notifying EPA of the discovery of the release, as provided in  
10 Paragraph 11.a., a single written report may be submitted to EPA  
11 on both the release and the action taken. The report shall  
12 contain all information in Paragraphs 11.b, 11.d, and 11.e above  
13 and shall be submitted within 60 days of completion of the  
14 response action.

15                  g. The Port and the Tribe agree to incorporate EPA  
16 comments into the Work performed, including reports prepared on  
17 response actions at the Settlement Properties. EPA may require  
18 further evaluation or additional reports on Work performed, and  
19 EPA may require the Port or the Tribe to perform additional Work  
20 as necessary to be protective of human health, welfare and the  
21 environment and to comply with applicable federal, tribal or  
22 state laws and regulations. EPA specifically reserves the right  
23 to determine at any point that EPA should have a direct role in  
24 overseeing and directing response actions under this Paragraph,  
25 including under a separate enforcement agreement.

26                  h. In addition to the reporting requirements set forth in  
27 this Paragraph 11.a., to the extent practicable, the Tribe shall

1 also record and maintain a permanent written record of any other  
2 releases of a hazardous substance, regardless of quantity, on a  
3 Settlement Property of which release the Tribe has knowledge.  
4 The Tribe shall require Parties in Privity with the Tribe to  
5 report such releases to the Tribe. To the extent known, the  
6 written record by the Tribe shall include the property name; the  
7 specific source, quantity, type, and location of the hazardous  
8 substance(s); the circumstances of the release and the  
9 discovery; and any response actions planned, completed, or  
10 underway. The Tribe shall submit annually, in January of each  
11 year, to EPA and the Port a "Puyallup Annual Release Report,"  
12 certified pursuant to Paragraph 13, that provides the  
13 information for each release that has been recorded pursuant to  
14 this Paragraph. Compliance with this Paragraph shall not  
15 relieve any party of any notification requirements of an  
16 applicable federal, tribal or state law or regulation.

17       12. Notice of Use or Physical Activity.

18       a. The following procedures shall apply if the Tribe or a  
19 Party in Privity with the Tribe proposes a use or physical  
20 activity in an area of a Settlement Property that is restricted  
21 by an Institutional Control imposed under this Decree.

22           (1) The Tribe shall provide timely written notice in  
23 accordance with the Implementing Agreement to the Port of a use  
24 or activity that the Tribe or a Party in Privity with the Tribe  
25 plans to undertake at a Settlement Property. The Tribe or a  
26 Party in Privity with the Tribe shall incorporate practicable  
27 construction and design requirements in its development plans to

1 avoid and minimize the disturbance of Historic Contamination and  
2 to comply with the Institutional Controls and restrictions set  
3 forth in Appendix A through F of this Consent Decree.

4 (2) Upon receipt of a written notice under this Paragraph,  
5 the Port, in consultation with the Tribe, shall promptly  
6 evaluate (1) whether the planned use or activity affects an  
7 Institutional Control that is imposed under this Consent Decree,  
8 and (2) whether additional cleanup of Historic Contamination at  
9 the Settlement Property is necessary to remain protective of  
10 human health, welfare and the environment for that planned use  
11 or activity.

12 (3) The Port and the Tribe shall notify EPA in writing of  
13 their determination that additional cleanup of Historic  
14 Contamination is necessary to remain protective of human health,  
15 welfare and the environment for that planned use or activity, or  
16 that the planned use or activity is inconsistent with an  
17 Institutional Control that is imposed under this Consent Decree.  
18 The notification shall identify whether the proposed activity is  
19 governed by Paragraphs 12.b. or 12.c. of this Consent Decree.  
20 The notification to EPA shall describe whether a response action  
21 will be necessary at the Settlement Property in order for the  
22 Tribe's planned use to proceed in a manner that is protective of  
23 human health, welfare and the environment. The notification may  
24 also be used to identify any proposal to modify or otherwise  
25 change an Institutional Control.

26 (4) If the evaluation completed under Paragraph 12.a.(2)  
27 finds that the planned use or activity may adversely affect an

1 area or use at the Settlement Property in a manner that is  
2 restricted by an Institutional Control or require modification  
3 of an Institutional Control that is imposed under this Consent  
4 Decree, the notification required by Paragraph 12.a. shall  
5 include, to the extent known, the results of the Port's  
6 investigation at that time, including the property name, the  
7 planned use or activity, the Institutional Control that would  
8 apply to the planned use or activity, the identification and  
9 location of the hazardous substance(s) that may be disturbed,  
10 circumstances of the potential release and the potential risks  
11 to human health, welfare and the environment, including but not  
12 limited to sampling results, any potential imminent and  
13 substantial threat to human health and the environment, and  
14 justifications for decisions pertaining to site activities, and  
15 any proposed response actions planned, completed, or underway.  
16 Compliance with this paragraph shall not relieve any party of  
17 any notification requirements of an applicable federal, tribal  
18 or state law or regulation.

19 (5) If the Port's and Tribe's evaluation finds that a  
20 response action is required to address the release or threat of  
21 a release of Historic Contamination or to ensure that cleanup  
22 levels of Historic Contamination remain protective of human  
23 health, welfare and the environment, the Port and the Tribe  
24 shall follow the procedures set forth above in Paragraph 11.  
25 Before proceeding with a response action, the Port, in  
26 consultation with the Tribe, shall submit to EPA a written

27

1 report, as described in Paragraph 11.c., to supplement  
2 information in the notice required by Paragraph 12. a.

3       b. Capped or Covered Areas of the Blair Backup Property.

4 If a use or activity is proposed on the Capped or Covered Areas  
5 of the Blair Backup Property:

6       (1) The Tribe or a Party in Privity with the Tribe shall  
7 incorporate practicable construction and design requirements in  
8 its development plans to avoid and minimize the disturbance of  
9 Historic Contamination beneath the Capped and Covered Areas of  
10 the Blair Backup Property and to comply with the Institutional  
11 Controls and restrictions set forth in Appendix F of this  
12 Consent Decree.

13       (2) The Port and the Tribe agree that EPA may disapprove of  
14 any use or physical activity proposed by the Tribe or a Party in  
15 Privity with the Tribe that may adversely affect the asphalt cap  
16 or the sand and gravel cover of the Capped and Covered Areas of  
17 the Blair Backup Property.

18       c. Subsurface Intrusive Activities. Institutional  
19 Controls imposed under this Consent Decree restrict subsurface  
20 intrusive activities in five areas at four Settlement  
21 Properties, as follows:

22       Peninsula Project Area of the Inner Hylebos Property (see  
23 Paragraph 4.c of Appendix A);  
24       East-West Road Property (see Paragraph 4.c of Appendix D)  
25       Former Lincoln Avenue Ditch Area at the Blair Waterway  
26 Property (see Paragraph 4.c of Appendix E)  
27       Lincoln Avenue Ditch Area that was filled in 1993 at the  
Blair Waterway Property (see Paragraph 4.d of Appendix E)  
Capped or Covered Areas of the Blair Backup Property (see  
Paragraphs 4.c and 4.d of Appendix F).

1       For these five areas, the Port and Tribe and Parties in  
2 Privity with the Tribe agree to comply with the Institutional  
3 Controls and restrictions set forth in Appendices A, D, E, and F  
4 of this Consent Decree and the notification requirements set  
5 forth in this Paragraph.

6       d. EPA may disapprove any use or activity proposed by the  
7 Tribe or a Party in Privity with the Tribe, or any response  
8 action proposed by the Port or the Tribe or a Party in Privity  
9 with the Tribe, that may be inconsistent with an Institutional  
10 Control imposed under this Consent Decree. Upon the request of  
11 the Tribe or the Port, EPA will consider modifying an  
12 Institutional Control pursuant to Section XXIII to permit a  
13 proposed use or activity. EPA will evaluate in a timely manner  
14 the request to determine whether the planned use or physical  
15 activity can be accomplished in a manner protective of human  
16 health, welfare, and the environment.

17       e. The Port and the Tribe agree to incorporate EPA  
18 comments into the Work performed and reports prepared on the  
19 Settlement Properties. As directed by EPA, the Port and the  
20 Tribe agree to further evaluate or prepare additional reports on  
21 Work performed, to perform additional Work as necessary to be  
22 protective of human health and the environment, and to comply  
23 with applicable federal, tribal or state laws and regulations.  
24 EPA specifically reserves the right to determine at any point  
25 that EPA should have a direct role in overseeing and directing  
26 the Work under this Paragraph, including under a separate  
27 enforcement agreement.

1                   f. EPA's determinations for the following are reviewable  
2 only in administrative dispute resolution proceedings under  
3 Section XIV: 1) a use or physical activity that may adversely  
4 affect the asphalt cap or the sand and gravel cover of the  
5 Capped or Covered Areas of the Blair Backup Property;  
6 2) subsurface intrusive activities that may occur in an area of  
7 a Settlement Property where that activity is restricted by an  
8 Institutional Control; or 3) a proposed use or activity that  
9 will require modification or changes to an Institutional  
10 Control. EPA shall make its determination in a timely manner.

11                 13. For each report submitted pursuant to this Consent  
12 Decree, a responsible official representing the Port or the  
13 Tribe shall certify the information contained in the report is  
14 true, accurate and complete. The following certification shall  
15 be signed by a responsible official on behalf of the Port or the  
16 Tribe:

17                 "In accordance with 28 U.S.C. § 1746, I certify under  
18 penalty of perjury under the laws of the United States that the  
19 information contained in and accompanying this certification is  
20 true, accurate, and complete. As to (the) (those) identified  
21 portion(s) of this (submission) (document) for which I cannot  
22 personally verify (its) (their) truth and accuracy, I certify as  
23 the responsible official having supervisory responsibility for  
24 the person(s) who, acting under my direct instructions made the  
25 verification, that this information is true, accurate, and  
26 complete. Dated this \_\_\_\_ day of \_\_\_\_, \_\_\_\_."

27

1       14. The absence of express EPA comment, approval or  
2 disapproval of any submission within any specified time period  
3 shall not be construed as approval by EPA.

4       15. The Port shall, prior to any off-site shipment of  
5 Waste Material from the Settlement Properties to an out-of-state  
6 waste management facility-, provide written notification to the  
7 appropriate state environmental official in the receiving  
8 facility's state and to the EPA Project Coordinator of such  
9 shipment of Waste Material. However, this notification  
10 requirement shall not apply to any off-site shipments when the  
11 total volume of all such shipments will not exceed 10 cubic  
12 yards.

13       a. The Port shall include in the written notification the  
14 following information, where available: (1) the name and  
15 location of the facility to which the Waste Material are to be  
16 shipped; (2) the type and quantity of the Waste Material to be  
17 shipped; (3) the expected schedule for the shipment of the Waste  
18 Material; and (4) the method of transportation. The Port shall  
19 notify the state in which the planned receiving facility is  
20 located of major changes in the shipment plan, such as a  
21 decision to ship the Waste Material to another facility within  
22 the same state, or to a facility in another state.

23       b. The Port shall provide the information required by  
24 Paragraph 15.a as soon as practicable after the award of the  
25 contract and before the Waste Material is actually shipped.

26       VII. QUALITY ASSURANCE. SAMPLING. and DATA ANALYSIS

16. Throughout all sample collection, transportation, and analysis activities, the Port and the Tribe and any Party in Privity with the Tribe shall use procedures for quality assurance, quality control, and chain-of-custody in complete accordance with procedures followed by EPA and consistent with EPA guidelines.

17. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

## VIII. ACCESS

18. a. Commencing upon the date of lodging of this Consent Decree, the Port and the Tribe, to the extent that the Port or the Tribe then has a possessory interest in one or more of the Settlement Properties, agree to provide the other Parties and their representatives, including EPA and its contractors, access at all reasonable times to the Settlement Properties, and the Tribe agrees that each Party in Privity with the Tribe shall provide access to the Settlement Properties for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

i. Monitoring response actions;

ii. Verifying any data or information submitted to the  
United States:

iii. Conducting investigations relating to contamination at or near the Settlement Properties;

- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Settlement Properties;
- vi. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Port or the Tribe or their agents, consistent with Section XVIII; and
- vii. Assessing the Port's, the Tribe's, and any of the 8 Parties in Privity with the Tribe compliance with this Consent Decree.

b. The obligations of the Port and the Tribe with respect to the provision of access under Paragraph 18.a. shall run with the land and shall be binding upon any and all persons who subsequently acquire any such interest or portion thereof ("Successors-in- Title"). Within 15 days after the entry of this Consent Decree or the transfer of the Settlement Property to the United States in trust for the Tribe, whichever is later, the Tribe shall record either at the Registry of Deeds for Pierce County, Washington, or with the appropriate office of the Bureau of Indian Affairs, a notice of obligation to provide access, as provided by this Section, and related covenants, as described in Section VI and Appendices A through F to this Consent Decree, and shall provide a written notice to EPA of compliance with this Paragraph. Each subsequent instrument conveying an interest to a Settlement Property shall reference

1 the recorded location of such notice and covenants applicable to  
2 such Settlement Property.

3       19. To the extent that any other property to which access  
4 is required for the implementation of this Consent Decree is  
5 owned or controlled by persons other than Tribe or the Port, the  
6 Port shall use best efforts to secure from such persons access  
7 for the Parties and their representatives, including, but not  
8 limited to, their contractors, as necessary to effectuate this  
9 Consent Decree. For purposes of this Paragraph "best efforts"  
10 includes the payment of reasonable sums of money in  
11 consideration of access. If any access required to complete  
12 activities under this Consent Decree is not obtained within 45  
13 days of the date EPA notifies the Port and Tribe in writing that  
14 additional access beyond that previously secured is necessary,  
15 the Port shall promptly notify the United States, and shall  
16 include in that notification a summary of the steps the Port has  
17 taken to attempt to obtain access. The United States may, as it  
18 deems appropriate, assist the Port in obtaining access. The  
19 Port shall reimburse the United States, in accordance with the  
20 procedures in Section XII (Reimbursement of Response Costs), for  
21 all costs incurred by the United States in obtaining access.

22       20. Notwithstanding any provision of this Consent Decree,  
23 the United States retains all of its access authorities and  
24 rights, including enforcement authorities related thereto, under  
25 CERCLA, RCRA and any other applicable statute or regulations.

26                   X. REPORTING RELEASES

1           21. Upon the occurrence of any event during performance of  
2 activities on the Settlement Properties that the Port or the  
3 Tribe are required to report pursuant to Section 103 of CERCLA,  
4 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and  
5 Community Right-to-know Act (EPCRA), the party shall within 24  
6 hours of the onset of such event orally notify the EPA Project  
7 Coordinator or the Alternate EPA Project Coordinator (in the  
8 event of the unavailability of the EPA Project Coordinator), or,  
9 in the event that neither the EPA Project Coordinator or  
10 Alternate EPA Project Coordinator is available, the Emergency  
11 Response Section, Region 10, United States Environmental  
12 Protection Agency. These reporting requirements are in addition  
13 to the reporting required by CERCLA Section 103, 42 U.S.C. S  
14 9603, or EPCRA Section 304.

15           22. Within 20 days of the onset of such an event, the Port  
16 and the Tribe shall furnish to EPA a written report, signed by  
17 the Party's Project Coordinator, setting forth the events which  
18 occurred and the measures taken, and to be taken, in response  
19 thereto. Within 30 days of the conclusion of such an event, the  
20 Port and the Tribe shall submit a report setting forth all  
21 actions taken in response thereto.

22           X. PROJECT COORDINATORS

23           23. Documents including reports, approvals, disapprovals,  
24 and other correspondence which must be submitted under this  
25 Consent Decree, shall be sent by certified mail, return receipt  
26 requested, to the following addressees or to any other  
27 addressees which Port, the Tribe, and EPA designate in writing.

1       a. One copy of documents to be submitted to EPA shall be  
2 forwarded to:

3               Karen L. Keeley, HW-113  
4               U.S. EPA, Region 10  
5               1200 Sixth Avenue  
6               Seattle, WA 98101

7       b. One copy of documents to be submitted the Port shall be  
8 forwarded to:

9               Curtis Ratcliffe  
10          Port of Tacoma  
11          P.O. Box 1837  
12          Tacoma, WA 98401-1837

13       c. Two (2) copies of documents to be submitted to the  
14          Tribe shall be forwarded to:

15          Bill Sullivan  
16          Puyallup Tribe  
17          2002 East 28th Street  
18          Tacoma, WA 98404

19       24. EPA may designate other representatives, including,  
20          but not limited to, EPA employees, and federal contractors and  
21          consultants, to observe and monitor the progress of any activity  
22          undertaken pursuant to this Consent Decree. EPA's Project  
23          Coordinator shall have the authority lawfully vested in a  
24          Remedial Project Manager ("RPM") and an On-Scene Coordinator  
25          ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300.  
26          In addition, EPA's Project Coordinator shall have authority,  
27          consistent with the National Contingency Plan, to halt any work  
              required by this Consent Decree and to take any necessary  
              response action when s/he determines that conditions at the  
              Settlement Properties constitute an emergency situation or may  
              present an immediate threat to public health or welfare or the

environment due to a release or threatened release of Waste Material.

## XI. EMERGENCY RESPONSE

25. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Settlement Properties that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Port and the Tribe shall, in addition to the notification requirements of Paragraph 11, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the EPA Project Coordinator is not available, the Port and the Tribe shall notify the EPA Superfund Response and Investigations Branch, EPA Region 10. The Port and the Tribe shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that the Port and the Tribe fail to take appropriate response action as required by this Section, and EPA takes such action instead, the Port shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XII (Reimbursement of Response Costs).

26. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United

1 States to take, direct, or order all appropriate action or to  
2 seek an order from the Court to protect human health, welfare  
3 and the environment or to prevent, abate, respond to, or  
4 minimize an actual or threatened release of Waste Material on,  
5 at, or from the Settlement Properties.

## XII. REIMBURSEMENT OF RESPONSE COSTS

15 Payment shall be made in accordance with instructions provided  
16 by the United States to the Port upon execution of the consent  
17 decree. Payments by EFT must be received at the U.S. D.O.J.  
18 lockbox bank by 4:00 p.m. (Eastern Time) to be credited on that  
19 day.

20        28. The Port shall reimburse the United States for all  
21 Future Response Costs not inconsistent with the National  
22 Contingency Plan incurred by the United States. The United  
23 States will send the Port a bill requiring payment that includes  
24 a prepared cost summary, which includes direct and indirect  
25 costs incurred by EPA and DOJ and their contractors, on an  
26 annual basis. The Port shall make all payments within sixty  
27 (60) days of the Port's receipt of each bill requiring payment.

1 The Port shall forward the certified check(s) to the U.S. EPA  
2 Superfund, P.O. Box 360903M, Pittsburgh, Pennsylvania 15251,  
3 payable to "EPA Hazardous Substances Response Superfund" and  
4 shall reference the Puyallup Land Transfer Consent Decree and  
5 civil action number. A copy of such check with an explanatory  
6 transmittal letter shall be sent to the Director of the  
7 Hazardous Waste Division, EPA, Region 10, the EPA Project  
8 Coordinator and the EPA Hearing Clerk, Office of Regional  
9 Counsel, EPA, Region 10, and to the U.S. Department of Justice  
10 as specified in Section XIX (Notices and Submissions).

11 29. The Port may contest payment of any Future Response  
12 Costs under Paragraph 28 if it determines that the United States  
13 has made an accounting error or if it alleges that a cost item  
14 that is included represents costs that are inconsistent with the  
15 NCP. Such objection shall be made in writing within 60 days of  
16 receipt of the bill and must be sent to the United States (if  
17 the United States' accounting is being disputed) pursuant to  
18 Section XIX (Notices and Submissions). Any such objection shall  
19 specifically identify the contested Future Response Costs and  
20 the basis for objection. In the event of an objection, the Port  
21 shall within the 60 day period pay all uncontested Future  
22 Response Costs to the United States in the manner described in  
23 Paragraph 28. Simultaneously, the Port shall establish an  
24 interest bearing escrow account in a federally- insured bank  
25 duly chartered in the State of Washington and remit to that  
26 escrow account funds equivalent to the amount of the contested  
27 Future Response Costs. The Port shall send to the United

1 States, as provided in Section XIX (Notices and Submissions), a  
2 copy of the transmittal letter and check paying the uncontested  
3 Future Response Costs, and a copy of the correspondence that  
4 establishes and funds the escrow account, including, but not  
5 limited to, information containing the identity of the bank and  
6 bank account under which the escrow account is established as  
7 well as a bank statement showing the initial balance of the  
8 escrow account. Simultaneously with establishment of the escrow  
9 account, the Port shall initiate the Dispute Resolution  
10 procedures in Section XIV (Dispute Resolution). If the United  
11 States prevails in the dispute, within 5 days of the resolution  
12 of the dispute, the Port shall pay the sums due (with accrued  
13 interest) to the United States in the manner described in  
14 Paragraph 28. If the Port prevails concerning any aspect of the  
15 contested costs, the Port shall pay that portion of the costs  
16 (plus associated accrued interest) for which it did not prevail  
17 to the United States in the manner described in Paragraph 28;  
18 the Port shall be disbursed any balance of the escrow account.  
19 The dispute resolution procedures set forth in this Paragraph in  
20 conjunction with the procedures set forth in Section XIV  
21 (Dispute Resolution) shall be the exclusive mechanisms for  
22 resolving disputes regarding the Port's obligation to reimburse  
23 the United States for its Future Response Costs.

24       30. In the event that the payments required by Paragraph  
25 are not made within 30 days of the effective date of this  
26 Consent Decree or the payments required by Paragraph 28 are not  
27 made within 60 days of the Port's receipt of the bill, the Port

1 shall pay interest on the unpaid balance at the rate established  
2 pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. In the  
3 event that payments are not made as required by Paragraphs 27  
4 and 28, the interest on Past Response Costs shall begin to  
5 accrue as of the effective date of the Consent Decree, and the  
6 interest on Future Response Costs shall begin to accrue on the  
7 date of the Port's receipt of the bill. Interest shall accrue  
8 at the rate specified through the date of the Port's payment.  
9 Payments of interest made under this Paragraph shall be in  
10 addition to such other remedies or sanctions available to the  
11 United States by virtue of the Port's failure to make timely  
12 payments under this Section.

### XIII. INDEMNIFICATION

14           31. The United States does not assume any liability by  
15 entering into this agreement or by virtue of any designation of  
16 the Port or the Tribe as EPA's authorized representatives under  
17 Section 104(e) of CERCLA. The Port shall indemnify, save and  
18 hold harmless the United States and its officials, agents,  
19 employees, contractors, subcontractors, or representatives for  
20 or from any and all claims or causes of action arising from, or  
21 on account of, acts or omissions of the Port, their officers,  
22 directors, employees, agents, contractors, subcontractors, and  
23 any persons acting on their behalf or under their control, in  
24 carrying out activities pursuant to this Consent Decree,  
25 including, but not limited to, any claims arising from any  
26 designation of a Party as EPA's authorized representatives under  
27 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). The Tribe shall

1 indemnify, save and hold harmless the United States and its  
2 officials, agents, employees, contractors, subcontractors, or  
3 representatives for or from any and all claims or causes of  
4 action arising from, or on account of, acts or . omissions of  
5 the Tribe, its officers, directors, employees, agents,  
6 contractors, subcontractors, any persons acting on their behalf  
7 or under their control, and Parties in Privity with the Tribe,  
8 in carrying out activities pursuant to this Consent Decree,  
9 including, but not limited to, any claims arising from any  
10 designation of a Party as EPA's authorized representatives under  
11 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, the  
12 Port agrees to pay the . United States all costs it incurs  
13 including, but not limited to, attorneys fees and other expenses  
14 of litigation and settlement arising from, or on account of,  
15 claims made against the United States based on acts or omissions  
16 of the Port, its officers, directors, employees, agents,  
17 contractors, subcontractors, and any persons acting on their  
18 behalf or under their control, in carrying out activities  
19 pursuant to this Consent Decree. The United States shall not be  
20 held out as a party to any contract entered into by or on behalf  
21 of the Port or the Tribe in carrying out activities pursuant to  
22 this Consent Decree. Neither the Port, the Tribe, nor any such  
23 contractor shall be considered an agent of the United States.

24       32. The Port and the Tribe waive all claims against the  
25 United States for damages or reimbursement or for set-off of any  
26 payments made or to be made to the United States, arising from  
27 or on account of any contract, agreement, or arrangement between

1 the Port or the Tribe and any person for performance of  
2 activities on or relating to the Settlement Properties,  
3 including, but not limited to, claims on account of construction  
4 delays. In addition, the Port and the Tribe shall indemnify and  
5 hold harmless the United States with respect to any and all  
6 claims for damages or reimbursement arising from or on account  
7 of any contract, agreement, or arrangement between any person  
8 for performance of Work on or relating to the Settlement  
9 Properties, including, but not limited to, claims on account of  
10 construction delays. The Tribe reserves, and this Consent  
11 Decree is without prejudice to, any claims the Tribe may have  
12 against the United States based on the United States' trust  
13 responsibilities to the Tribe.

14    XIV. DISPUTE RESOLUTION

15    33. Unless otherwise expressly provided for in this  
16 Consent Decree, the dispute resolution procedures of this  
17 Section shall be the exclusive mechanism to resolve disputes  
18 arising under or with respect to this Consent Decree. However,  
19 the procedures set forth in this Section shall not apply to  
20 actions by the United States to enforce obligations of the  
21 Parties that have not been disputed in accordance with this  
22 Section.

23    34. Any dispute which arises under or with respect to this  
24 Consent Decree shall in the first instance be the subject of  
25 informal negotiations between the parties to the dispute. The  
26 period for informal negotiations shall not exceed 20 days from  
27 the time the dispute arises, unless it is modified by written

1 agreement of the parties to the dispute. The dispute shall be  
2 considered to have arisen when one Party sends the other Parties  
3 a written Notice of Dispute.

4 35. The following procedures and Paragraphs 36 and 37  
5 apply only if EPA notifies the Parties that EPA is a party to  
6 the dispute.

7 a. In the event that the parties cannot resolve a dispute  
8 by informal negotiations under the preceding Paragraph, then the  
9 position advanced by EPA shall be considered binding unless,  
10 within 10 days after the conclusion of the informal negotiation  
11 period, the Port or the Tribe invoke the formal dispute  
12 resolution procedures of this Section by serving on EPA a  
13 written Statement of Position on the matter in dispute,  
14 including, but not limited to, any factual data, analysis or  
15 opinion supporting that position and any supporting  
16 documentation relied upon by the Port or the Tribe. The  
17 Statement of Position shall specify the Port's or the Tribe's  
18 position as to whether formal dispute resolution should proceed  
19 under Paragraph 36 or 37.

20 b. Within fourteen (14) days after receipt of the Port's  
21 or the Tribe's Statement of Position, EPA will serve on the  
22 Parties its Statement of Position, including, but not limited  
23 to, any factual data, analysis, or opinion supporting that  
24 position and all supporting documentation relied upon by EPA.  
25 EPA's Statement of Position shall include a statement as to  
26 whether formal dispute resolution should proceed under Paragraph  
27 36 or 37.

1           c. If there is disagreement between EPA and the Port or  
2 the Tribe as to whether dispute resolution should proceed under  
3 Paragraph 36 or 37, the parties to the dispute shall follow the  
4 procedures set forth in the paragraph determined by EPA to be  
5 applicable. However, if the Port or the Tribe ultimately  
6 appeals to the Court to resolve the dispute, the Court shall  
7 determine which paragraph is applicable in accordance with the  
8 standards of applicability set forth in Paragraphs 36 and 37.

9           36. Formal dispute resolution for disputes pertaining to  
10 the selection or adequacy of any response action and all other  
11 disputes that are accorded review on the administrative record  
12 under applicable principles of administrative law shall be  
13 conducted pursuant to the procedures set forth in this  
14 Paragraph. For purposes of this Paragraph, the adequacy of any  
15 response action includes, without limitation: (1) the adequacy  
16 or appropriateness of plans, procedures to implement plans, or  
17 any other items requiring approval by EPA under this Consent  
18 Decree; and (2) the adequacy of the performance of response  
19 actions taken pursuant to this Consent Decree. Nothing in this  
20 Consent Decree shall be construed to allow any dispute by the  
21 Port or the Tribe regarding the validity of provisions of the  
22 ROD for the CO/NT Site, the Settlement Agreement, the Settlement  
23 Act, or the Implementing Agreement.

24           a. An administrative record of the dispute shall be  
25 maintained by EPA and shall contain all statements of position,  
26 including supporting documentation, submitted pursuant to this  
27 Paragraph. Where appropriate, EPA may allow submission of

1 supplemental statements of position by the parties to the  
2 dispute.

3 b. The Director of the Hazardous Waste Division, EPA  
4 Region 10, will issue a final administrative decision resolving  
5 the dispute based on the administrative record described in  
6 Paragraph 36.a. This decision shall be binding upon the Port  
7 and the Tribe, subject only to the right to seek judicial review  
8 pursuant to Paragraph 36.c. and d.

9 c. Any administrative decision made by EPA pursuant to  
10 Paragraph 36.b. shall be reviewable by this Court, provided that  
11 a notice of judicial appeal is filed by the Port or the Tribe  
12 with the Court and served on all Parties within 10 days of  
13 receipt of EPA's decision. The notice of judicial appeal shall  
14 include a description of the matter in dispute, the efforts made  
15 by the parties to resolve it, the relief requested, and the  
16 schedule, if any, within which the dispute must be resolved to  
17 ensure orderly implementation of this Consent Decree. The  
18 United States may file a response to the Port's or the Tribe's  
19 notice of judicial appeal.

20 d. In proceedings on any dispute governed by this  
21 Paragraph, the Port or the Tribe shall have the burden of  
22 demonstrating that the decision of the Hazardous Waste Division  
23 Director is arbitrary and capricious or otherwise not in  
24 accordance with law. Judicial review of EPA's decision shall be  
25 on the administrative record compiled pursuant to Paragraph  
26 36.a.

1           37. Formal dispute resolution for disputes that neither  
2 pertain to the selection or adequacy of any response action nor  
3 are otherwise accorded review on the administrative record under  
4 applicable principles of administrative law, shall be governed  
5 by this Paragraph.

6           a. Following receipt of a party's Statement of Position  
7 submitted pursuant to Paragraph 35, the Director of the  
8 Hazardous Waste Division, EPA Region 10, will issue a final  
9 decision resolving the dispute. The Hazardous Waste Division  
10 Director's decision shall be binding on the Port and the Tribe  
11 unless, within 10 days of receipt of the decision, the Port or  
12 the Tribe file with the Court and serve on the parties a notice  
13 of judicial appeal setting forth the matter in dispute, the  
14 efforts made by the parties to resolve it, the relief requested,  
15 and the schedule, if any, within which the dispute must be  
16 resolved to ensure orderly implementation of the Consent Decree.  
17 The United States may file a response to the Port's or the  
18 Tribe's notice of judicial appeal.

19           b. Judicial review of any dispute governed by this  
20 Paragraph shall be governed by applicable provisions of law.

21           38. The invocation of formal dispute resolution procedures  
22 under this Section shall not extend, postpone or affect in any  
23 way any obligation of the Port or the Tribe under this Consent  
24 Decree not directly in dispute, unless EPA or the Court agrees  
25 otherwise.

26           39. In the event EPA determines that the Port or the Tribe  
27 have failed to implement any provisions of the Work in an

1       adequate or timely manner, EPA may perform any and all portions  
2       of the Work as EPA determines necessary. The Port or the Tribe  
3       may invoke the procedures set forth in Section XIV (Dispute  
4       Resolution) to dispute EPA's determination that a party failed  
5       to implement a provision of the Work in an adequate or timely  
6       manner as arbitrary and capricious or otherwise not in  
7       accordance with law. Such dispute shall be resolved on the  
8       administrative record. Costs incurred by the United States in  
9       performing the Work pursuant to this Paragraph shall be  
10       considered Future Response Costs that the Port shall pay  
11       pursuant to Section XII (Reimbursement of Response Costs).

12       40. Notwithstanding any other provision of this Consent  
13       Decree, the United States retains all authority and reserves all  
14       rights to take any and all response actions authorized by law.

15                    XV. COVENANTS BY THE PORT AND THE TRIBE

16       41. The Port and the Tribe hereby covenant not to sue and  
17       agree not to assert any claims or causes of action against the  
18       United States with respect to this Consent Decree, including,  
19       but not limited to, any direct or indirect claim for  
20       reimbursement from the Hazardous Substance Superfund  
21       (established pursuant to the Internal Revenue Code, 26 U.S.C. §  
22       9507) through Sections 106(b)(2), 111, 112, and 113 of CERCLA,  
23       42 U.S.C. §§ 9611, 9612, and 9613, or any other provision of  
24       law, any claim against the United States, including any  
25       department, agency or instrumentality of the United States under  
26       Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613,  
27       related to the Settlement Properties, or any claims arising out

1 of response activities at the Settlement Properties. However,  
2 the Port and the Tribe reserve, and this Consent Decree is  
3 without prejudice to, actions against the United States based on  
4 negligent actions taken directly by the United States (not  
5 including oversight or approval of the Port or the Tribe plans  
6 or activities) that are brought pursuant to any statute other  
7 than CERCLA and for which the waiver of sovereign immunity is  
8 found in a statute other than CERCLA. The Tribe reserves, and  
9 this Consent Decree is without prejudice to, any claims the  
10 Tribe may have against the United States based the United  
11 States' trust responsibilities to the Tribe. Nothing in this  
12 Consent Decree shall be deemed to constitute preauthorization of  
13 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §  
14 9611, or 40 C.F.R. § 300.700(d).

15 XVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

16 42. Nothing in this Consent Decree shall be construed to  
17 create any rights in, or grant any cause of action to, any  
18 person not a party to this Consent Decree. The preceding  
19 sentence shall not be construed to waive or nullify any rights  
20 that any person not a signatory to this decree may have under  
21 applicable law. Each of the Parties expressly reserves any and  
22 all rights (including, but not limited to, any right to  
23 contribution), defenses, claims, demands, and causes of action  
24 which each party may have with respect to any matter,  
25 transaction, or occurrence relating in any way to the Settlement  
26 Properties against any person not a party hereto.

1           43. With regard to claims for contribution against the  
2 Port of Tacoma and the Tribe for matters addressed in this  
3 Consent Decree, the Parties hereto agree that the Port and the  
4 Tribe are entitled to such protection from contribution actions  
5 or claims as is provided by Section 113(f)(2) of CERCLA, 42  
6 U.S.C. S 9613(f)(2).

7           44. The Port and the Tribe agree that with respect to any  
8 suit or claim for contribution brought by them for matters  
9 related to this Consent Decree they will notify the United  
10 States in writing no later than 60 days prior to the initiation  
11 of such suit or claim.

12          45. The Port and the Tribe also agree that with respect to  
13 any suit or claim for contribution brought against them for  
14 matters related to this Consent Decree they will notify in  
15 writing the United States within 10 days of service of the  
16 complaint on them. In addition, the Port or the Tribe shall  
17 notify the United States within 10 days of service or receipt of  
18 any Motion for Summary Judgment and within 10 days of receipt of  
19 any order from a court setting a case for trial.

20          46. In any subsequent administrative or judicial  
21 proceeding initiated by the United States for injunctive relief,  
22 recovery of response costs, or other appropriate relief relating  
23 to the Settlement Properties, the Port shall not assert, and may  
24 not maintain, any defense or claim based upon the principles of  
25 waiver, res iudicata, collateral estoppel, issue preclusion,  
26 claim-splitting, or other defenses based upon any contention

that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

## XVII. NO ACTION ASSURANCES

47. Pursuant to the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. S 1773, the Tribe is not liable for Historic Contamination on Settlement Properties. EPA recognizes that the Settlement Act is a unique statement of federal policy. EPA has considered this policy, EPA's Policy Against "No Action" Assurances, the Port of Tacoma's agreement to accept liability to the United States and the Tribe for Historic Contamination, and the specific facts and law of this situation in entering into this Agreement. Accordingly, the United States, on behalf of EPA, provides to the Tribe the following assurance of no action.

48. In order to assist the Tribe to enjoy the full benefits of the Settlement Agreement, and to reflect the Port's continuing liability for Historic Contamination, EPA will refrain from instituting an enforcement action under CERCLA, RCRA § 7003, or Section 311(f) of the Federal Water Pollution Control Act against the Tribe or a Party in Privity with the Tribe for a release solely involving Historic Contamination on the Settlement Properties. This no action assurance applies only to Historic Contamination, and does not apply to a release of a hazardous substance, which is not Historic Contamination, that occurs on a Settlement Property after title to the Settlement Property has been conveyed to the United States to hold in trust for the benefit of the Tribe. The following circumstances shall

1        not be considered "a release solely involving Historic  
2        Contamination on the Settlement Properties," and this assurance  
3        does not apply:

4                a. In circumstances where the Tribe or a Party in Privity  
5        with the Tribe is not in compliance with all of the  
6        Institutional Controls and procedures, including notices, set  
7        forth in or required under this Consent Decree, including its  
8        Appendices and the Implementing Agreement, or in modifications  
9        to such Appendices approved pursuant to this Consent Decree,  
10        that are applicable to the specific Settlement Property and  
11        where such noncompliance causes or is a contributing factor to  
12        the release of Historic Contamination. This agreement at  
13        Paragraph 18 provides that the Tribe or a Party in Privity with  
14        the Tribe grants to EPA, its authorized representatives, and  
15        other persons performing response actions under agreement with  
16        the United States an irrevocable right of access to the  
17        Settlement Properties for the purposes of monitoring performance  
18        of response actions, as EPA deems necessary;

19                b. In circumstances where the Tribe or a Party in Privity  
20        with the Tribe performs or conducts a physical activity that EPA  
21        has disapproved pursuant to the Consent Decree, and such  
22        activity contributes to the release of Historic Contamination on  
23        any of the Settlement Properties, whether or not such activities  
24        were conducted in accordance with other requirements of this  
25        Consent Decree and its Appendices, or in modifications to such  
26        Appendices approved pursuant to this Consent Decree, or of the  
27        Implementing Agreement;

1                   c. In circumstances where the Tribe or a Party in Privity  
2 with the Tribe is responsible for a release of a hazardous  
3 substance or hazardous material on any of the Settlement  
4 Properties, where such substance or material that is released  
5 does not meet the definition of Historic Contamination;

6                   d. Where the release of Historic Contamination involves:

7                   i. A party who caused or contributed to the release  
8 of Historic Contamination on a Settlement Property prior to  
9 transfer to the United States to be held in trust for the Tribe.

10                  ii. A party in privity with the Tribe for matters  
11 that do not involve the Settlement Properties.

12                  iii. The Port of Tacoma;

13                  e. In circumstances where EPA decides that the  
14 circumstance does not concern "a release solely involving  
15 Historic Contamination on a Settlement Property subject to this  
16 Consent Decree." The decision whether the Tribe or the Party in  
17 Privity with the Tribe has met its burden of convincing EPA, and  
18 whether the assurance provided by the Paragraph applies, shall  
19 be made by EPA subject only to the procedures set forth in the  
20 Dispute Resolution procedures in Section XIV of this Consent  
21 Decree. EPA's determination shall be subject to judicial review  
22 only to the extent and in the manner provided in Paragraph 36,  
23 which shall be the exclusive mechanism for resolving whether the  
24 assurance in this Paragraph applies, and shall not be subject to  
25 judicial review in any other proceeding; or

26                  f. If the United States no longer holds the subject  
27 Settlement Property in trust for the Tribe.

1                   XVIII. ACCESS TO INFORMATION: RETENTION OF RECORDS

2                   49. The Port and the Tribe shall provide to EPA, upon  
3 request, copies of all documents and information within their  
4 possession or control or that of their contractors or agents  
5 relating to activities at the Settlement Properties or to the  
6 implementation of this Consent Decree, including, but not  
7 limited to, sampling, analysis, chain of custody records,  
8 manifests, trucking logs, receipts, reports, sample traffic  
9 routing, correspondence, or other documents or information  
10 related to the activities under this Consent Decree. The Port  
11 and the Tribe shall also make available to EPA, for purposes of  
12 investigation, information gathering, or testimony, their  
13 employees, agents, or representatives with knowledge of relevant  
14 facts concerning the performance of the Work.

15                   50. a. The Parties may assert business confidentiality  
16 claims covering part or all of the documents or information  
17 submitted to EPA under this Consent Decree to the extent  
18 permitted by and in accordance with Section 104(e)(7) of CERCLA,  
19 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or  
20 information determined to be confidential by EPA will be  
21 afforded the protection specified in 40 C.F.R. Part 2, Subpart  
22 B. If no claim of confidentiality accompanies documents or  
23 information when they are submitted to EPA, or if EPA has  
24 notified the Parties that the documents or information are not  
25 confidential under the standards of Section 104(e)(7) of CERCLA,  
26 42 U.S.C. § 9607(e)(7), the public may be given access to such  
27 documents or information without further notice.

1                   b. The Port or the Tribe may assert that certain  
2 documents, records and other information are privileged under  
3 the attorney-client privilege or any other privilege recognized  
4 by federal law. If a Party asserts such a privilege in lieu of  
5 providing documents, they shall provide the EPA with the  
6 following: (1) the title of the document, record, or  
7 information; (2) the date of the document, record, or  
8 information; (3) the name and title of the author of the  
9 document, record, or information; (4) the name and title of each  
10 addressee and recipient; (5) a description of the contents of  
11 the document, record, or information; and (6) the privilege  
12 asserted by the Party. However, no documents, reports or other  
13 information created or generated pursuant to the requirements of  
14 the Consent Decree shall be withheld on the grounds that they  
15 are privileged.

16                51. No claim of confidentiality shall be made with respect  
17 to any data, including, but not limited to, all sampling,  
18 analytical, monitoring, hydrogeologic, scientific, chemical, or  
19 engineering data, or any other documents or information  
20 evidencing conditions at or around the Settlement Properties.

21                52. The Port and the Tribe shall preserve, for a minimum  
22 of ten (10) years after preparation, all records and documents  
23 in possession or control of its divisions, employees, agents,  
24 accountants, contractors, or attorneys which relate in any way  
25 to activities conducted under this Consent Decree, despite any  
26 document retention policy to the contrary.

27

53. At the conclusion of this document retention period, the Parties shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, the Parties shall deliver any such records or documents to EPA.

## XIX. NOTICES AND SUBMISSIONS

54. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing; provided, however, the notices and submissions required under Section VI or the Appendices A through G to this Consent Decree shall be directed to the Project Coordinators of EPA, the Puyallup Tribe, and the Port specified in Paragraph 23. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Tribe, and the Port, respectively.

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044

Re: DOJ #

and

1 Director, Hazardous Waste Division  
2 United States Environmental Protection Agency  
3 Region 10  
4 1200 Sixth Avenue Seattle, Washington 98101

5 As to EPA:

6 Karen Keeley  
7 EPA Project Coordinator  
8 United States Environmental Protection Agency  
9 Region 10  
10 1200 Sixth Avenue (HW-113)  
11 Seattle, Washington 98101

12 As to the Puvallun Tribe:

13 Bill Sullivan  
14 Environmental Department  
15 Puyallup Tribe of Indians  
16 2002 East 28th Street Tacoma, Washington 98404

17 As to the Port of Tacoma:

18 Curtis Ratcliffe  
19 Port of Tacoma  
20 P.O. Box 1837  
21 Tacoma, WA 98401-1837

22 XX. EFFECTIVE DATE

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

26 XXI. RETENTION OF JURISDICTION

27 56. This Court retains jurisdiction over both the subject  
matter of this Consent Decree and the Parties for the duration  
of the performance of the terms and provisions of this Consent  
Decree for the purpose of enabling any of the Parties to apply  
to the Court at any time for such further order, direction, and  
relief as may be necessary or appropriate for the construction  
or modification of this Consent Decree, or to effectuate or

enforce compliance with its terms, or to resolve disputes in accordance with Section XIV (Dispute Resolution) hereof.

## XXII. APPENDICES

57. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the Inner Hylebos Property Summary

"Appendix B" is the Upper Hylebos Property Summary

"Appendix C" is the Taylor Way Property Summary

"Appendix D" is the East-West Road Property Summary

"Appendix E" is the Blair Waterway Property Summary

"Appendix F" is the Blair Backup Property Summary

"Appendix G" is the Implementing Agreement

"Appendix H" is the Memorandum of Agreement

"Appendix I" is the CB/NT Record of Decision

"Appendix J" is the Settlement Agreement.

### XXIII. MODIFICATION

58. Schedules specified in this Consent Decree for completion of actions may be modified by agreement of EPA, the Tribe, and the Port. Appendices A through F of this Consent Decree may be modified by agreement of EPA, the Tribe, and the Port. The Tribe shall provide notice of any such proposed modification to the Bureau of Indian Affairs. All such modifications shall be made in writing, and no oral modification shall be effective.

59. Except for Paragraph 58, no modifications shall be made to the Consent Decree without written notification to and

1 written approval of the United States, the Tribe, the Port, and  
2 the Court.

3 60. Nothing in this Decree shall be deemed to alter the  
4 Court's power to enforce, supervise or approve modifications to  
5 this Consent Decree.

6 XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

7 61. This Consent Decree shall be lodged with the Court for  
8 a period of not less than thirty (30) days for public notice and  
9 comment in accordance with Section 122(d)(2) of CERCLA, 42  
10 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States  
11 reserves the right to withdraw or withhold its consent if the  
12 comments regarding the Consent Decree disclose facts or  
13 considerations which indicate that the Consent Decree is  
14 inappropriate, improper, or inadequate. The Tribe and the Port  
15 consent to the entry of this Consent Decree without further  
16 notice.

17 62. If for any reason the Court should decline to approve  
18 this Consent Decree in the form presented, this agreement is  
19 voidable at the sole discretion of any party and the terms of  
20 the agreement may not be used as evidence in any litigation  
21 between the Parties.

22 XXV. SIGNATORIES/SERVICE

23 63. Each undersigned representative of the Puyallup Tribe  
24 of Indians, the Port of Tacoma, and the Assistant Attorney  
25 General for Environment and Natural Resources of the Department  
26 of Justice certifies that he or she is fully authorized to enter  
27

into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

64. The Puyallup Tribe of Indians and the Port of Tacoma  
hereby agree not to oppose entry of this Consent Decree by this  
Court or to challenge any provision of this Consent Decree  
unless the United States has notified the Parties in writing  
that it no longer supports entry of the Consent Decree.

65. The Port of Tacoma and the Puyallup Tribe of Indians shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. The Port of Tacoma and the Puyallup Tribe of Indians hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 19th DAY January, 1995

United States District Judge

1 UNDERSIGNED PARTIES enter into this Consent Decree in the matter  
2 of United States v. Port of Tacoma, relating to the Puyallup  
3 Land Claims Settlement.

4 FOR THE UNITED STATES OF AMERICA

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

6 Lois J. Schiffer  
7 Assistant Attorney General  
8 Environment and Natural Resources  
9 Division  
U.S. Department of Justice  
Washington, D.C. 20530 1

10 Kalyn Cherie Free  
11 Environmental Enforcement Section  
12 Environment and Natural Resources  
13 Division  
U.S. Department of Justice  
Washington, D.C. 20530

14 Chuck Clarke  
15 Regional Administrator, Region 10  
16 U.S. Environmental Protection  
17 Agency  
18 1200 Sixth Avenue  
Seattle, Washington 98101

19 G. McAllister  
20 Assistant Regional Counsel  
21 U.S. Environmental Protection  
22 Agency  
23 Region 10  
24 1200 Sixth Avenue  
25 Seattle, Washington 98101

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of the United States v. Port of Tacoma, relating to the  
3 Puyallup Land Claims Settlement.

4 FOR THE PUYALLUP TRIBE OF INDIANS

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

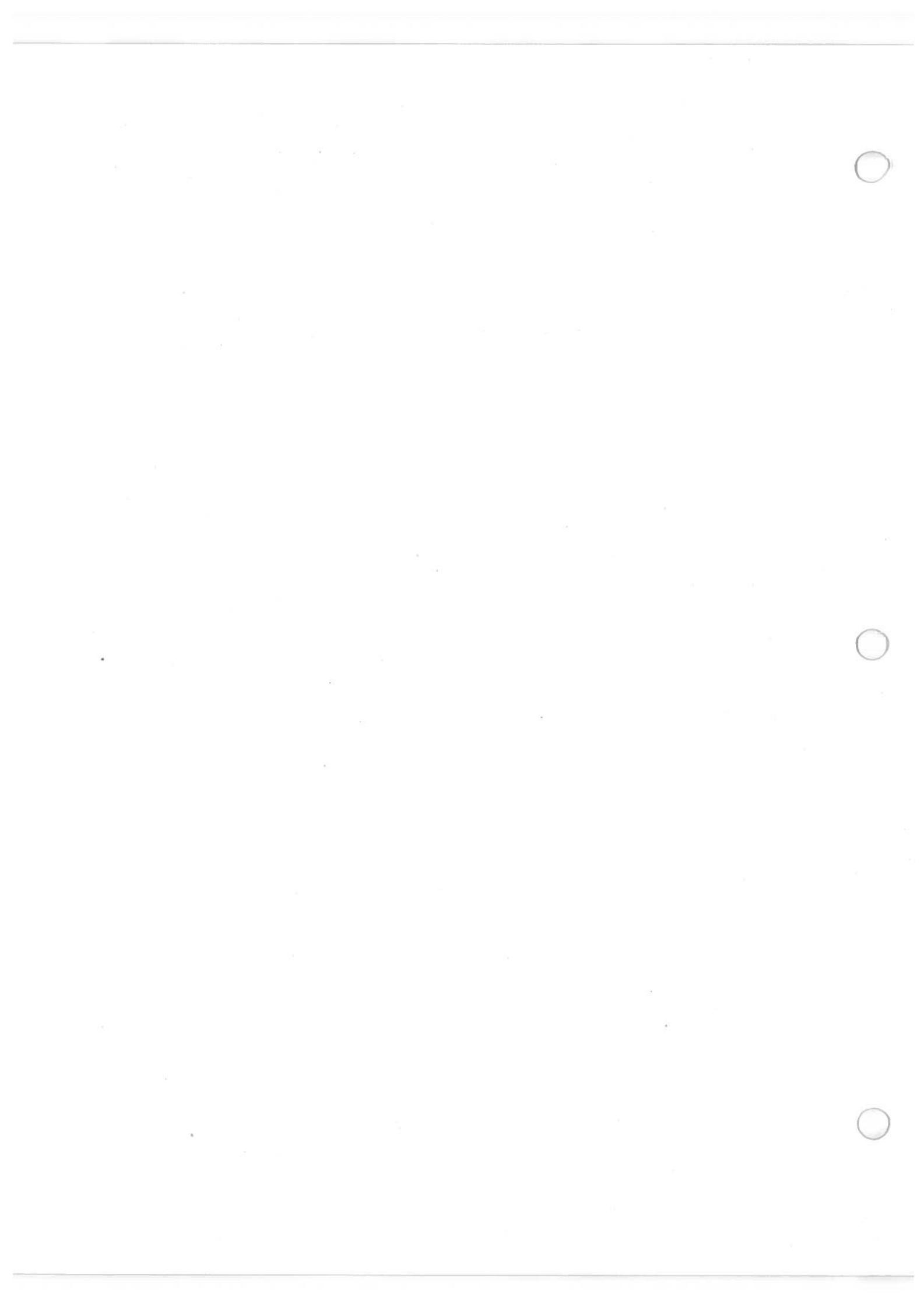
6  
7 SEA2-28392.1  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the  
2 matter of United States v. Port of Tacoma, relating to the  
3 Puyallup Land Claims Settlement.

4 FOR THE UNITED STATES OF AMERICA

5 Date \_\_\_\_\_

6 Steven A. Herman  
7 Assistant Administrator  
8 Office of Enforcement and  
9 Compliance Assurance  
U.S. EPA (MS-2211)  
401 M. Street SW  
Washington, D.C. 20460



**MEMORANDUM OF AGREEMENT BETWEEN THE PORT OF TACOMA  
AND  
THE CITY OF TACOMA FOR SHARING COSTS FOR  
RELOCATING UTILITIES  
AT BLAIR WATERWAY AND OTHER OBLIGATIONS TO  
IMPLEMENT THE  
SETTLEMENT AGREEMENT WITH THE PUYALLUP INDIAN  
TRIBE  
DATED AUGUST 27, 1988**

Whereas, the Port of Tacoma ("Port") and City of Tacoma General Government and Department of Public Utilities ("City") are parties to the Agreement between the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States of America and certain private property owners dated August 27, 1988 (the "Settlement Agreement"), and

Whereas, prior to the effective date of the Settlement Agreement it became apparent that the City's Sanitary Sewer Crossing and Water Transmission Main crossings for Blair Waterway would conflict with the Puyallup Tribe of Indians ("Tribe") proposed pier and dock structure, and the use of the Blair Waterway Property as contemplated in the Settlement Agreement, and

Whereas, the Port, City and Tribe will be parties to a Supplemental Agreement to the Settlement Agreement (hereinafter called "SA") which will provide for certain specified obligations by the parties thereto, pertaining to relocating these mentioned utilities and dredging, and which SA is contemporaneous to this Memorandum of Agreement ("Memorandum") and incorporated herein, and the purpose of this Memorandum is to further outline the cost sharing and other

obligations between the Port and City including transfer of City Belt Line property and easement for the City Light Division;

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

A. CITY TRANSMISSION MAIN RELOCATION

1. The City Department of Public Utilities (Water Division) shall relocate its 36-inch Lincoln Avenue (Vacated)-Blair Waterway Transmission Main in accordance with the terms and conditions in SA, and as further set forth herein.

2. The City shall construct the project substantially in accordance with Exhibit A. All obligations of the Port pursuant to this Memorandum are conditioned on the project scope as defined in Exhibit A unless a change in project scope is agreed to in writing by the Port.

3. The cost estimate for the 36-inch transmission main relocation is set forth on Exhibit A. Except to the extent that the Tribe reimburses the City and Port for the said water main's relocation (as set forth in Section D herein), it is agreed that the City and Port shall share all of the relocation costs equally. The estimated cost for the City (Water Division) and Port for the water transmission main relocation will be approximately \$950,000 each.

(a) The said cost estimate for the water main relocation (Exhibit A) makes a number of assumptions pertaining to the cost of this relocation. In the event that the cost of this subject relocation exceeds or is below the cost estimate due to the mentioned assumptions or any other problems, the Port and City agree to share

the additional costs equally.

(b) The City shall keep detailed cost accounting records for all costs related to this work, including the City's own staff time. The City will only invoice to the Port its actual cost for this work plus fifteen percent (15%) for overhead and administrative expenses when City employee time is involved.

(c) The Port shall pay its said share of the cost within 30 days of being invoiced by the City for such costs. Failure to pay the invoiced amount within 30 days of the date the invoice is mailed shall obligate the Port to pay interest at 1% per month on the unpaid balance. Exhibit D (which by this reference is incorporated herein) further outlines the division of costs between the parties.

(d) The City agrees that the construction and materials standards related to the 36-inch water main relocation costs that will be invoiced to the Port shall not exceed those construction or materials standards that are presently used by the City Water Division. The City's records and/or proposed construction plans and specifications pertaining to this project will be available for review by the Port.

4. The Port agrees to grant to the City appropriate right-of-way easements to accommodate the City's said water transmission main relocation (as set forth on Exhibit A). The City's construction plans and specifications for the portion of the line on Port property must be reviewed and approved by the Port's Chief Engineer prior to construction. The Port will respond with any comments within 10 working days. Except as set forth herein, the form of the to-be-granted

easement shall be substantially similar to the easement attached as Exhibit B (recorded under fee number 2087273). The Port agrees that it will not construct any permanent structures within either the twenty (20) foot wide easement area or the two contiguous and parallel fifteen (15) foot wide temporary construction easement areas for this relocated main. In the event a permanent structure is constructed within the temporary construction easement area, the City may charge and the Port shall pay for all additional costs to the City arising from the encumbrance including reimbursement of the cost to repair or replace the damaged structure and delays or extra costs for construction or maintenance.

5. After relocation and notice from the City Water Division, the Port shall become the owner of the abandoned existing 36-inch water main that is within the Blair Waterway from the pierhead line on the northerly side to the end of the southerly abandoned end at the southerly pierhead line.

#### B. CITY SANITARY SEWER RELOCATION

1. The City (Public Works Department Sewer Utility) shall relocate by installing deeper, the existing Lincoln Avenue (Vacated)-Blair Waterway sanitary sewer line in accordance with the SA, or a mutually agreeable location.

2. The City (Public Works Department, Sewer Utility) shall construct the project substantially in accordance with Exhibit C (which by this reference is incorporated herein). All obligations of the Port pursuant to this Memorandum are conditioned on the project scope as defined in Exhibit C unless a change in project scope is agreed to in writing by the Port.

3. The cost for the relocated Blair Waterway Sanitary Sewer crossing is set forth on Exhibit C. Except to the extent that the Tribe reimburses the City and Port for the sewer line relocation, it is agreed that the City and Port shall share in all of the sanitary sewer line relocation cost on the following basis: City 77.78%, Port 22.22%. The invoicing and payment for the sanitary sewer line relocation shall be substantially the same as set forth in Section A.3 above. Exhibit D further outlines the division of costs between the parties.

4. If the relocation of the sanitary sewer line can be accomplished in close proximity to the proposed dredging for the Blair Waterway, the Port or its contractor shall (at the option and request of the City) both dredge the trench in the Waterway for the deepened line and also cover the newly installed line in the Water with six feet of appropriate cover materials. The cost of such work shall be proportionately shared in accordance with the sharing provisions herein.

#### C. TRIBE'S UTILITY RELOCATION COST REIMBURSEMENT

1. The Port's and City's cost sharing for the City's utility relocation costs as set forth in this Memorandum anticipates the reimbursement of certain costs from the Tribe. However, until the Tribe fully reimburses or pays certain monies as further explained, the City and Port agree to fund the Tribe's share of the relocation costs. The Tribe's share of the relocation costs is:

Water Line Relocation = \$800,000\*  
Sanitary Sewer Line Relocation = \$100,000\*  
\* As adjusted by Index.

2. The initial payment by the Tribe of \$450,000 shall be to the City at the time the Tribe develops Blair Waterway property (as set forth in SA). The City Water Division shall receive \$400,000 of this amount and the City Sewer Utility shall receive \$50,000. Said amounts will be increased to reflect adjustment pursuant to the agreed index and interest pursuant to SA.

3. The Port agrees to reimburse the City for an additional \$450,000 (plus indexing and interest adjustments) for the Tribe's share of the City's utility relocation costs, which will be invoiced and paid in accordance with A.3 herein during project construction.

4. If for any reason the Tribe does not pay all or part of the utility relocation costs, the Port and City shall share equally all of the water transmission main relocation costs and proportionately (e.g., 77.78% City and 22.22% Port, respectively) for the sanitary sewer line relocation costs).

D. CITY BELT LINE PROPERTY TRANSFER TO PORT WHICH WILL BE TRANSFERRED BY THE PORT TO THE TRIBE

1. The City is transferring by deed the City Belt Line parcel of land (approximately 0.66 acre) which is described on Exhibit E, which by this reference is incorporated herein.

2. All environmental cleanup activities on the subject parcel shall be conducted by the Port at the Port's sole expense.

3. The City hereby assigns over to the Port any and all causes of action which it may have against others for pollution, contamination or environmental harm done to said property or for

contribution and indemnity of liability accruing under federal or state cleanup statutes, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the State Model Toxics Control Act or successor statutes.

4. The City shall reimburse the Port for all cleanup costs incurred by the Port as a result of the City's operations.

5. In consideration of the assignment to the Port of causes of action based on contribution or indemnity for liability arising out of federal or state cleanup statutes, the Port agrees that the City shall have no liability to the Port for cleanup costs resulting solely from the City's status as a former landowner.

6. The Port agrees that, if the City is the subject of claims or legal actions by third parties, it will reassign back to the City such causes of action as are herein specified, except that this paragraph does not apply to cleanup liability arising from Belt Line operations, or wastes disposed of by the City or generated as a result of City operations.

E. EASEMENTS TO BE RESERVED IN PORT'S DEEDS TO TRIBE AND EASEMENTS TO BE GRANTED TO CITY BY THE PORT

1. The City will be providing the Port with numerous reservations of easement that the Port agrees to insert in the appropriate deeds that the Port will be granting to the U.S. Bureau of Indian Affairs in Trust for the Puyallup Indian Tribe. The Port agrees that before delivery of the deed, the City will have the right to review each deed to verify that the appropriate reservation of

easement has been included (Exhibit F).

2. In order to implement the Settlement Agreement, within 60 days of the effective date of this Memorandum, the Port shall grant the City Light Division an easement to allow rerouting certain transmission lines along Alexander Avenue, which relocation is necessary due to the removal of the towers in the Lincoln Avenue Street Vacated area. The Port agrees to provide the necessary easement to the City Light Division at no cost to the City.

(a) This easement will follow the generally described route: from Northeast Substation southerly and parallel to Alexander Avenue, on the east side of Alexander over (Port) released property to a point about 250 feet northerly of East-West Road, then southerly to the westerly side of Alexander Avenue and crossing the northwesterly corner of a triangular shaped parcel on the northwest corner of Alexander and East-West Road.

(b) The form of the easement shall be substantially similar to the easements held by the City Light Division for its 115 kV transmission lines (50 foot width), a copy of which form is attached and by this reference is incorporated herein as Exhibit G.

#### F. EFFECTIVE DATE

The effective date of this Memorandum shall be the effective date of the Settlement Agreement.

Approved and Agreed: Approved and Agreed:

PORT OF TACOMA CITY OF TACOMA

By: \_\_\_\_\_  
Ned Shera Ray E. Corpuz, Jr.  
Commissioner City/Manager

Dated: March 21, 1990 Dated: March 22, 1990

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

E.E.  
Coates  
Director  
of  
Utilities

Dated: March 22, 1990

APPROVED AS TO FORM:

Chief Assistant City Attorney

EXHIBIT A

**TACOMA CITY WATER  
PROPOSED 36" TRANSMISSION MAIN TO REPLACE  
LINCOLN AVENUE CROSSING OF BLAIR WATERWAY  
(Location Sketch Attached)  
Revised February 20, 1990**

COST ESTIMATE

- A. Direct Construction Cost \$2,360,820  
(Per attached estimate)
- B. Engineering, Surveying & Inspection @ 7% \$ 165,000
- C. Bond/Financing Costs @ 8% \$ 189.000

TOTAL \$2,714,820

In the event that following cost assumptions do not prove correct, which results in increased costs, such increased costs shall be paid by the Port, Tribe or others and not the City Water Division.

ASSUMPTIONS:

1. No right-of-way costs.
2. No soil or water contamination requiring special treatment.
3. Normal permitting process.
4. No cost for disruption of operations by Port tenants.
5. Pipe buried 5' in existing Port parking yard and roadways to account for future container storage loadings.
6. Garbage encountered in Marshall Avenue can go

to County dump.

7. Suitable excess trench and roadway material is disposed of locally.
8. Railroad tracks can be temporarily removed, not requiring drilled casings.
9. No wetlands are involved.
10. Pierce County cooperation on Marshall Avenue construction permits and location of pipeline.
11. Leave the abandoned pipe in place and it will become property of Port in waterway and Tribe in Lincoln Avenue vacated.

**TACOMA CITY WATER  
PROPOSED 36" TRANSMISSION MAIN TO REPLACE  
LINCOLN AVENUE CROSSING OF BLAIR WATERWAY  
February 20, 1990**

**ESTIMATE**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE IN FIGURES</u>	<u>TOTAL PRICE</u>
1.	Mobilization.		\$ 100,000
	Furnish, deliver and install approximately 8,300 feet of 36" ID x 5/16" wall thickness steel pipe, coal tar coated and double wrapped complete with		
2.	appurtenances.	\$ 105 L/F	\$ 871,500
3.	Furnish and install adequate trench safety systems in accordance with Chapter 49.17 R.C.W.		\$ 50,000
4.	Provide dewatering systems.		\$ 250,000
5.	Furnish and install approximately 300 1/F of steel casing pipe, including insulators and end caps, in c pen trench at railway crossings.	\$ 120 L/F	\$ 36,000
	Furnish, deliver and install three 36" AWWA Class		

6.	150 Butterfly Valves.	\$ 10,000 Ea.	\$ 30,000
7.	Furnish and install four 36" flexible couplings.	\$ 1,500 Ea.	\$ 6,000
8.	Furnish and install four precast manhole chambers per Drawing 1869-B.	\$ 2,000 Ea.	\$ 8,000
9.	Furnish and install two precast blowoff chambers per Drawing 1868-B.	\$ 2,000 Ea.	\$ 4,000
10.	Furnish and install two precast air valve chambers per Drawing 1870-B.	\$ 2,000 Ea.	\$ 4,000
11.	Furnish and install two precast blowoff/manhole chambers per Drawing 1871-B.	\$ 2,000 Ea.	\$ 4,000
12.	Furnish and install three 6'x8' valve chankers with all appurtenances.	\$ 4,000 Ea.	\$ 12,000
13.	Trench excavation and backfill for approximately 8,300 feet of 36" steel pipe (horiz. measure).	\$ 10 L/F	\$ 83,000

**PROPOSED 36" TRANSMISSION MAIN TO REPLACE  
LINCOLN AVENUE CROSSING OF BLAIR WATERWAY**

**PROPOSAL**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE IN FIGURES</u>	<u>TOTAL PRICE</u>
14.	Furnish and place approximately 13,000 cubic yards of sand bedding.	\$ 5 C/Y	\$ 65,000
15.	Furnish and place approximately 16,000 cubic yards of bankrun sand and gravel.	\$ 6 C/Y	\$ 96,000
16.	Remove and dispose of approximately 25,000 cubic yards of excess trench excavation.	\$ 2 C/Y	\$ 50,000
17.	Remove and dispose of approximately 2,500 cubic yards of unsuitable material.	\$ 10 C/Y	\$ 25,000
18.	Pave and dispose of approximately 3,300 tons of garbage fm m trench excavation.	\$ 45 Ton	\$ 148,500
19.	Furnish and place 100 tons of cold mix	40 Ton	\$ 4,000
20.	Furnish -and place approximately 2,500 cubic yards of crushed gravel surfacing base course.	\$ 25 C/Y	\$ 62,500

21.	Approximately 150 hours of Type 1 compaction (water settling).	\$ 50 Hr.	\$ 7,500
22.	Approximately 100 hours of Type 2 compaction (hand operated mechanical tampers).	\$ 40 Hr.	\$ 4,000
23.	Approximately 400 hours of Type 3 compaction (self- propelled or towed vibratory rollers).	\$ 60 Hr.	\$ 24,000
24.	Furnish and place approximately 4,500 tons of Class B hot mix asphalt for street restoration and repairs in place.	\$ 40 Ton	\$ 180,000
25.	Removal and replacement of railway tracks.		\$ 35,000
26.	Cut and cap existing 36" pipe, two locations, dewatering and valve operation by Water Division.		\$ 30,000
		SUB-TOTAL	\$2,190,00
		7.8% SALES TAX	\$ 170,820
		TOTAL OF SCHEDEULE A	<u>\$2,360,82</u>

(Hold page for drawing, Page 4 of 4)

## EXHIBIT C

BLAIR WATERWAY SANITARY SEWER CROSSING

To accommodate the dredging of the Blair Waterway the existing sanitary sewer pressure line crossing the Waterway will be replaced with a polyethylene pipe. The existing line would stay in service while the new line is constructed. At the end of the project the newly constructed pipe would be connected to the existing gravity sewer on the south side of the Waterway and to the pump station on the north side.

It is assumed that the new pipe will be laid with 6 feet of cover along the bottom and sides of the Waterway. The newly dredged side slope of the Waterway is assumed to be 2:1.

	Lump Sum	\$ 15,000	\$ 15,
Mobilization			
16" Dia Polyethylene Pipe, Class 57	800 LF	\$ 30	\$ 24,
Installation	5 Day	\$ 4,000	\$ 20,
Manhole, Special	1 Only	\$ 5,000	\$ 5,0
Ductile Iron Pipe 16" Dia Class 52	570 LF	\$ 30	\$ 17,
Dredging	6,400 CY	\$ 10	\$ 64,
Trench Excavation	1,368 CY	\$ 8	\$ 10,
Haul & Waste Mat'l	7,768 CY	\$ 10	\$ 77,
Backfill	6,648 CY	\$ 20	\$132,
Shoring & Cribbing	4,560 SF	\$ 0.50	\$ 2,2
Connect to Existing Pressure Line	2 Only	\$ 4,000	\$ 8,0
Pneumatic Check Valves, Installed, 16" Dia	2 Only	\$ 8,500	\$ 17, \$383,

Misc 30% \$118,  
Total \$512,  
Tax 7.8% \$ 39,  
Grand Total \$552,

EXHIBIT D

2/28/90

**Outline of  
Tribe/City/Port Obligations  
for Blair Improvements**

**A. Sewer**

Estimated Cost \$552,000

Cost Allocations

Port on behalf of Tribe - 100,000  
(Port to be compensated  
pursuant to Fort/Tribe  
Blair Payment Agreement)

Total Port/City responsibility 452,000

Port 100,434 (22.22)

City 351,566 (77.781)

NOTE: Project cost increases will be shared by Port and City in proportion to the percentages above, except to the extent that such additional costs are offset by indexing of Tribe's contribution.

**B. Water**

Estimated Cost \$2,714,820

Cost Allocation:

Port on behalf of Tribe - 350,000  
(Port to be compensated  
pursuant to Port/Tribe  
Blair Payment Agreement)

Tribe's Development Payment - 450,000

Total Port/City Responsibility 1,914,820

Port 957,410 (50%)

City 957,410 (50%)

NOTE: Project cost increases will be shared by Port and City in proportion to the percentages above, after such additional costs are offset by indexing of Tribe's contribution.

EXHIBIT E  
88-44RWC/D6413

WARRANTY DEED

The Grantor, CITY OF TACOMA, a municipal corporation, for and on behalf of its Department of Public Utilities, for and in consideration of settlement of certain land claims in the agreement dated August 27, 1988, between the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States of America, and certain private property owners, conveys and warrants to the PORT OF TACOMA, a duly organized Port District of Pierce County, Washington, as Grantee, the following described property situated in Pierce County, State of Washington, including any interest therein which Grantor may hereinafter acquire, to wit:

Beginning at a point on the westerly line of Alexander Avenue in the City of Tacoma, Washington, said point being 480 feet northwesterly from point of intersection of said westerly line of Alexander Avenue, extended southerly with the northerly line of Lincoln Avenue extended easterly; thence southwesterly on a curve having a radius of 480 feet through an angle of 90 degrees to point of tangent with the northerly line of Lincoln Avenue; thence easterly to the beginning of curve designating the westerly line of Alexander Avenue; thence along said westerly line to Point of Beginning.

Situate in the County of Pierce, State of Washington.

Containing approximately 0.92 acres, more or less.

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers and its corporate seal to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_

CITY OF TACOMA

By \_\_\_\_\_  
Mayor

Attest:

City Clerk

Authorized by City Council Ordinance No. 24269,  
adopted January 10, 1989, and

by Public Utility Board Resolution No. U-8177,  
adopted December 20, 1988.

88-44RWC/D6413

STATE OF WASHINGTON )  
 ) SS  
COUNTY OF PIERCE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before  
me personally appeared Karen L. R. Vialle, to me  
known to be the Mayor of the City of Tacoma, the  
municipal corporation that executed the within and  
foregoing instrument, and acknowledged said  
instrument to be the free and voluntary act and  
deed of the City of Tacoma, for the uses and  
purposes herein mentioned, and on oath stated that  
she was authorized to execute said instrument and  
that the seal affixed is the corporate seal of the  
City of Tacoma.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my official seal the day and year  
first above written.

Approved:

Engineer Notary Public in and for the  
State of Washington  
Approved as to Form and Legality: Residing at  
Tacoma  
My commission expires \_

Assistant City Attorney

Approved:

Belt Line Division Superintendent

Accepted:

Director of Utilities

Dated   

(CITYACKU 3/90)

EXHIBIT F

UTILITY CORRIDOR ON THE BLAIR WATERWAY PARCEL

Reserving to the CITY OF TACOMA a forty (40) foot non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, reconstructing, maintaining and operating City utilities within the Utility Corridor under a strip of land described below, together with a construction easement which allows the right to enter upon the property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing, or removing the City's utilities under a parcel of land situate in the County of Pierce, State of Washington, to-wit:

A strip of land 40.00 feet in width in the Southeast Quarter of the Northwest Quarter of Section 35, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington, lying 20.00 feet on each side of the following described line:

Commencing at the intersection of the Southeast right-of-way line of Lincoln Avenue, as vacated by City of Tacoma Ordinance Number 21508, and the Southwest right-of-way line of Alexander Avenue; thence Northwesterly along said Southwest right-of-way line of Alexander Avenue, North  $45^{\circ}53'14''$  West, 80.00 feet; thence continuing along said right-of-way line, North  $45^{\circ}53'23''$  West 50.00 feet to the TRUE POINT OF BEGINNING of said described line; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln

Avenue, South 44°06'53" West 605.00 feet to the END OF SAID DESCRIBED LINE.

The sidelines of said strip of land shall be shortened or lengthened as required to terminate on the Southwesterly right-of-way line of Alexander Avenue.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for replacing, installing, or repairing said utilities and appurtenances. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this forty (40) foot permanent easement provided however, that pile supported pier/wharf, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling and pier structures within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or similar technology to drive piling or pier supports within or adjacent to the City's easement. Owner's herein permitted uses within

the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's utilities.
3. During any maintenance, repair or construction, the City of Tacoma specifically agrees to work under and not damage any pile supported pier/wharf, railroads, material handling, conveyor systems and utility lines. If maintenance or repair under these limitations is not feasible, then the City of Tacoma may request owner's permission to remove railroads, material handling, or conveyor system devices on terms acceptable to owner or the City shall abandon said utility lines and, at the City's sole expense, will reconstruct new utility lines, and the owner, in the event of abandonment, shall grant at no cost to the City a new easement under its property at a location mutually agreeable

and the City will reconstruct a new line by boring under such existing permanent improvements and such new line shall be at an appropriate depth to meet existing or planned dredging standards for navigation and berthing within the Blair Waterway.

4. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
5. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility facilities under this paragraph.

This easement replaces, supercedes and releases portions of CITY OF TACOMA easements lying in Lincoln Avenue vacated from the Southwesterly line of Alexander Avenue to a point 167 feet Northeasterly of the Northeasterly Pierhead line of Blair Waterway, reserved and recorded in the office of the Pierce County Auditor under Auditor

Fee No. 2864315 (Ordinance No. 21508) to be effective the same time as this herein deed becomes effective.

ALSO,

BLAIR WATERWAY STORM SEWER EASEMENT

Reserving to the CITY OF TACOMA, Department of Public Works, Sewer Utility Division, a fifteen (15') foot wide non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, installing, repairing, inspecting and maintaining a storm sewer and outfall line under the entire area described below, together with a construction easement which allows the right to enter upon the property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing, or removing said storm sewer and outfall line under a parcel of land situate in the County of Pierce, State of Washington, to-wit:

A strip of land 15.00 feet in width in the Southeast Quarter of the Northwest Quarter of Section 35, Township 21 North, Range 3 East, of the Willamette Meridian, Pierce County, Washington, lying 7.50 feet on each side of the following described line:

Commencing at the intersection of the Southeast right-of-way line of Lincoln Avenue, as vacated by City of Tacoma Ordinance Number 21508, and the Southwest right-of-way line of Alexander Avenue; thence Northwesterly along said Southwest right-of-way line of Alexander Avenue, North  $45^{\circ}53'14''$  West, 80.00 feet; thence continuing along said

right-of-way line, North 45°53'23" West 50.00 feet; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln Avenue, South 44° 06'53" West 602.50 feet; thence South 45°53'23 1I East 12.50 feet to the TRUE POINT OF BEGINNING of said described line; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln Avenue, South 44°06'53" West 67.50 feet to the Northeasterly Bulkhead line of Blair Waterway; thence continuing Southwesterly and parallel with said Southeast rights-of-way line of Lincoln Avenue, South 44°06'53" West 100.00 feet to the Northeasterly Pierhead line of Blair Waterway and the END OF SAID DESCRIBED LINE.

The sidelines of said strip of land shall be shortened or lengthened as required to terminate on the Northeasterly Pierhead line of the Blair Waterway.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way as the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for replacing, installing, or repairing said storm sewer and appurtenances. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this fifteen (15') foot permanent easement provided however, that pile supported pier/wharf, railroads, material handling, conveyor systems, utility lines or similar said uses located above, shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling and pier structures within or above the City's easement. Owner will use extra care to assure that no damage results from constructing within the City's easement. Owner will use water jets or similar technology to drive piling or pier supports within or adjacent to the City's easement.

Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's sewer line.

3. During any maintenance, repair or construction, the City of Tacoma specifically agrees to work under and not damage any pile supported pier/wharf, railroads, material handling, conveyor systems and utility lines. If maintenance or repair under these limitations is not feasible, then the City of Tacoma may request owner's permission to remove railroads, material handling, or conveyor system devises on terms acceptable to owner or the City shall abandon said sewer line and, at the City's sole expense, will reconstruct a new sewer line, and the owner, in the event of abandonment, shall grant at no cost to the City a new easement under its property at a location mutually agreeable and the City will reconstruct a new line by boring under such existing permanent improvements and such new line shall be at an appropriate depth to meet existing or planned dredging standards for navigation and berthing within the Blair Waterway as provided to the City by the owner.
4. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed

by property owner and/or owner's successors in interest within the easement area.

5. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility facilities under this paragraph.

This easement replaces, supercedes and releases a portion of those CITY OF TACOMA easements lying in Lincoln Avenue vacated from the Northeasterly Pierhead line of Blair Waterway, thence northeasterly 167 feet, reserved and recorded in the office of the Pierce County Auditor under Auditor Fee No. 2864315 (Ordinance No. 21508) to be effective the same time as this herein deed becomes effective.

ALSO,

BLAIR WATERWAY POWERLINE EASEMENT

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten (10') foot wide non-exclusive right-of-way easement, for the purpose of exercising the perpetual right and privilege of constructing, installing, repairing, inspecting and maintaining its lines of electric transmission, distribution and/or communication under the entire area described below, together with a construction easement which allows the right to enter upon, over, along and contiguous to the property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing, or removing said line under a parcel of land situate

in the County of Pierce, State of Washington,  
to-wit:

A strip of land 10.00 feet in width in the  
Southeast Quarter of the Northwest Quarter of  
Section 35, Township 21 North, Range 3 East  
of the Willamette Meridian, Pierce County,  
Washington, lying 5.00 feet on each side of  
the following described line:

Commencing at the intersection of the  
Southeast right-of-way line of Lincoln  
Avenue, as vacated by City of Tacoma  
Ordinance Number 21508, and the  
Southwest right-of-way line of Alexander  
Avenue; thence Northwesterly along said  
Southwest right-of-way line of Alexander  
Avenue, North  $45^{\circ}53'14''$  West, 80.00  
feet; thence continuing along said  
right-of-way line, North  $45^{\circ}53'23''$  West  
50.00 feet; thence Southwesterly and  
parallel with said Southeast right-of-  
way line of Lincoln Avenue, South  $44^{\circ}$   
 $06'53''$  West 602.50 feet to the TRUE  
POINT OF BEGINNING of said described  
line; thence continuing parallel with  
said right-of-way line, South  $44^{\circ}06'53''$   
West 67.50 feet to the Northeasterly  
Bulkhead line of Blair Waterway; thence  
continuing parallel with said right-of-  
way line, South  $44^{\circ}06'53''$  West 100.00  
feet to the Northeasterly Pierhead line  
of Blair Waterway and the END OF SAID  
DESCRIBED LINE.

The sidelines of said strip of land  
shall be shortened or lengthened as  
required to terminate on the  
Northeasterly Pierhead line of the Blair  
Waterway.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed," contiguous to and adjoining the above right-of-way. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for repairing, installing or replacing said line. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this ten (10') foot permanent easement provided however, that pile supported pier/wharf, railroads, material handling, conveyor systems, utility lines or similar said uses located above, shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling or pier structures within or above the City's easement. Owner will use extra care to assure that no damage results from constructing within the City's easement. Owner will use water jets or similar technology to drive piling or pier supports within or adjacent to the City's easement. Owner's herein permitted uses, within the right-of-way, shall not unreasonably compromise or limit the uses of the easement by the City intended hereunder or substantially increase the costs of maintenance, repair or replacement of City's utilities.

This easement is subject to the following conditions:

1. Lack of use by the City shall not

constitute an abandonment, or termination of this easement.

2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. During any maintenance, repair or construction, the City of Tacoma specifically agrees to work under and not damage any pile supported pier/wharf, railroads, material handling, conveyor systems and utility lines. If maintenance or repair under these limitations is not feasible, then the City of Tacoma may request owner's permission to remove railroads, material handling, or conveyor system devices on terms acceptable to owner or the City shall abandon said line and, at the City's sole expense, will reconstruct a new line. The owner, in the event of abandonment, shall grant, at no cost to the City, a new easement under its property at a location mutually agreeable and the City shall reconstruct said line by boring under such existing permanent improvements and such new line shall be at appropriate depth to meet existing or planned dredging standards for navigation and berthing within the Blair Waterway.
4. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and

damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.

5. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.
6. The City shall construct its lines of electric transmission distribution and/or communication at appropriate depths to meet existing or planned dredging standards for navigation and berthing within the Blair Waterway as provided in the Blair Navigation Project and as provided to the City by Owner prior to construction.

This easement replaces, supercedes and releases portions of CITY OF TACOMA easements lying in Lincoln Avenue vacated from the Southwesterly line of Alexander Avenue to a point 167 feet Northeasterly of the Northeasterly Pierhead line of Blair Waterway, reserved and recorded in the office of the Pierce County Auditor under Auditor Fee No. 2864315 (Ordinance No. 21508) to be effective the same time as this herein deed becomes effective.

ALSO,

BLAIR WATERWAY SANITARY SEWER EASEMENT

Reserving to the City of Tacoma Department of Public Works, Sewer Utility Division, a triangular shaped and a ten (10') foot wide non-exclusive right-of-way easement, for the purpose of exercising the perpetual right and privilege of constructing, installing, repairing, inspecting and maintaining a sanitary sewer, pump station and appurtenances in and under the entire area described below, together with a construction easement which allows the right to enter upon, over and along the property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing, or removing said sanitary sewer, pump station and appurtenances under and along a parcel of land situate in the County of Pierce, State of Washington, to-wit:

A triangular parcel of land in the Southeast Quarter of the Northwest Quarter of Section 35, Township 21 North, Range 3 East, of the Willamette Meridian being more particularly described as follows:

Commencing at the intersection of the Southeast right-of-way line of Lincoln Avenue, as vacated by City of Tacoma Ordinance Number 21508, and the Southwest right-of-way line of Alexander Avenue; thence Northwesterly along said Southwest right-of-way line of Alexander Avenue, North 45°53'14" West, 45.00 feet to the TRUE POINT OF BEGINNING; thence continuing Northwesterly along said right-of-way line, North 45°53'14" West

35.00 feet; thence continuing Northwesterly along said right-of-way line, North  $45^{\circ}53'23''$  West 30.00 feet; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln Avenue, South  $44^{\circ}06'53''$  West 40.00 feet; thence Easterly to the POINT OF BEGINNING AND,

A strip of land 10.00 feet in width in the Southeast Quarter of the Northwest Quarter of Section 35, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington, lying 5.00 feet on each side of the following described line:

Commencing at the intersection of the Southeast right-of-way line of Lincoln Avenue as vacated by City of Tacoma Ordinance Number 21508, and the Southwest right-of-way line of Alexander Avenue; thence Northwesterly along said Southwest right-of-way line of Alexander Avenue, North  $45^{\circ}53'14''$  West, 80.00 feet; thence continuing along said right-of-way line, North  $45^{\circ}53'23''$  West 50.00 feet; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln Avenue, South  $44^{\circ}06'53''$  West 602.50 feet; thence North  $45^{\circ}53'23''$  West 10.00 feet to the TRUE POINT OF BEGINNING of said described line; thence Southwesterly and parallel with said Southeast right-of-way line of Lincoln Avenue, South  $44^{\circ}06'53''$  West 67.50 feet to the Northeasterly Bulkhead line of the Blair Waterway; thence continuing Southwesterly and parallel

with said Southeast right-of-way line of Lincoln Avenue, South 44°06'53" West 100.00 feet to the Northeasterly Pierhead line of Blair Waterway and the END OF SAID DESCRIBED LINE.

The sidelines of said strip of land shall be shortened or lengthened as required to terminate on the Northeasterly pierhead line of the Blair Waterway.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed", contiguous to and adjoining the above right-of-way. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said sanitary sewer, pump station and appurtenances. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this ten (10') foot permanent easement provided however, that pile supported pier/wharf, railroads, material handling, conveyor systems, utility lines or similar said uses located above, shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling or pier structures within or above the City's easement. Owner will use extra care to assure that no damage results from constructing within the City's easement. Owner will use water jets or similar technology to

drive piling or pier supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement by the City intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's sanitary sewer, pump station and appurtenances.
3. During any maintenance, repair or construction, the City of Tacoma specifically agrees to work under and not damage any pile supported pier/wharf, railroads, material handling, conveyor systems and utility lines. If maintenance or repair under these limitations is not feasible, then the City of Tacoma may request owner's permission to remove railroads, material handling, or conveyor system devises on terms acceptable to owner or the City shall abandon said sanitary sewer, pump station and appurtenances and, at the City's sole expense, will reconstruct a

new sanitary sewer and pump station. The owner, in the event of abandonment, shall grant at no cost to the City a new easement under its property at a location mutually agreeable and the City shall reconstruct said sanitary sewer and pump station by boring under such existing permanent improvements to meet existing or planned dredging standards for navigation and berthing within the Blair Waterway as provided in the Blair Navigation Project and as provided to the City by owner prior to construction.

4. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
5. Owner specifically reserves the right to request and require the City to relocate within a mutually agreed reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility facilities under this paragraph. The owner's obligation to pay for relocation costs herein, shall not

apply to the onetime relocation obligation of the City required by the tripartite Supplemental Agreement between the Puyallup Tribe, Port of Tacoma and the City of Tacoma dated March 24, 1990.

6. The pump station facility may be located above ground, in the proximity of its present location.

This easement replaces, supercedes and releases portions of CITY OF TACOMA easements lying in Lincoln Avenue vacated from the Southwesterly line of Alexander Avenue to a point 167 feet Northeasterly of the Northeasterly Pierhead line of Blair Waterway, reserved and recorded in the office of the Pierce County Auditor under Auditor Fee No. 2864315 (Ordinance No. 21508) to be effective the same time as this herein deed becomes effective.

POWER TRANSMISSION LINE EASEMENT (E-5146):

Reserving to the CITY OF TACOMA, Department of Public Utilities, Light Division a forty (40') foot non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, operating and maintaining electric power transmission, subtransmission, distribution and communication facilities, together with a construction easement which allows the right to enter upon the property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing, or removing said electric power transmission, subtransmission, distribution and communication facilities, together with the right to trim and keep trimmed all danger trees, over and across a parcel of land situate in the County of Pierce,

State of Washington, to-wit:

A strip of land 40.00 feet in width in the Southeast Quarter of Section 35, and in the Southwest Quarter of Section 36, all in Township 21 North, Range 3 East of the Willamette Meridian, Pierce County Washington, whose Northeasterly line is 40.00 feet Northeasterly of, as measured at right angles, from the following described line:

Commencing at the brass pin at the intersection of the monument lines of Alexander Avenue and Lincoln Avenue; thence South  $45^{\circ}53'50''$  East, along said Alexander Avenue monument line, 80 feet to the Southeasterly right-of-way line extended of Lincoln Avenue; thence North  $44^{\circ}06'17''$  East along said extension, 60.00 feet to the Northeasterly right-of-way line of Alexander Avenue and the TRUE POINT OF BEGINNING of said described line; thence South  $45^{\circ}53'50''$  East along said right-of-way line 4329.45 feet to the East line, extended Southerly, of a parcel of land conveyed to the port of Tacoma by deed recorded under Auditor's Fee Number 8110260223 and the end of said described line.

The sidelines of said strip of land shall be shortened or lengthened as required to terminate on said Southeasterly right-of-way line of Lincoln Avenue and said East line, extended Southerly of a parcel of land conveyed to the Port of Tacoma by deed recorded under Auditor's Fee Number 8110260223.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for repairing, replacing, and installing, said line. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this forty (40') foot permanent easement provided however, that piling supports, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or similar technology to drive piling supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or

more consecutive years by the City or City's successor, then this easement shall be of no force or effect.

2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes a portion of Easement No. 5146, dated May 31, 1961, and recorded in the office of the Pierce County Auditor under Auditor Fee No 1938328, said

portion of former easement will be released by the CITY OF TACOMA to be effective the same time as this herein deed becomes effective.

PUBLIC WORKS STREET EASEMENT FROM PORT OF TACOMA:

Reserving to the CITY OF TACOMA, Department of Public Works, an easement for public street purposes across the described real property situate in Pierce County, Washington, to-wit:

Parcel "A":

A strip of land in Section 35, Township 21 North, Range 3 East, W.M., described as follows:

Beginning at the intersection of the southwesterly line of Taylor Way and the east line of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of said Section 35; thence southerly along said east line to a point 4.00 feet distant from, when measured at right angles, the southwesterly line of Taylor Way; thence northwesterly parallel with the said southwesterly line to the east line of Lot 1, Short Plat No. 83-08-19-0230; thence northeasterly along said east line to the southwesterly line of Taylor Way; thence along said southwesterly line to the point of beginning.

Parcel "B":

A strip of land in Section 36, Township 21 North, Range 3 East, W.M., described as follows:

Beginning at the intersection of the north line of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of the Northwest

Quarter (NW 1/4) of said Section 36 and the southwesterly line of Taylor Way; thence southeasterly along said southwesterly line to the east line of the West Half (W 1\2) of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of said Section 36; thence southerly along said east line to a point 4.00 feet distant from, when measured at right angles, the southwesterly line of Taylor Way; thence northwesterly parallel with the said southwesterly line to the north line of the Southwest Quarter (SW 1/4) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of said Section 36; thence easterly along said north line to the point of beginning.

Parcel "C":

A strip of land in Section 36, Township 21 North, Range 3 East, W.M., described as follows:

Beginning at the intersection of the north line of the Southwest Quarter (SW 1/4) of said Section 36 and the southwesterly line of Taylor Way; thence southeasterly 477.16 feet along said southwesterly line; thence southwesterly 1.00 foot at right angles to said southwesterly line; thence northwesterly 350.00 feet parallel with said southwesterly line; thence northwesterly to the intersection of the north line of the Southwest Quarter (SW 1/4) of said section and a point 3.00 feet distant from, when measured at right angles, the southwesterly line of Taylor Way; thence easterly along said north line to the point of beginning.

Parcel "D":

The northerly 4.00 feet of the West Half (W 1/2) of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of the Northwest Quarter (NW 1/4) of Section 36, Township 21 North, Range 3 East, W.M., lying southwest of Taylor Way.

This easement reservation replaces and supercedes that easement dated May 12, 1987, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 8708110371, which former easement will be released by the CITY OF TACOMA to be effective the same time as this herein deed becomes effective.

UNDERGROUND POWER LINE (E-9466):

Reserving to the CITY OF TACOMA, Department of Public Utilities, Light Division a ten (10') foot non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of installing its underground power and communication lines with appurtenant underground equipment together with a construction easement which allows the right to enter upon the property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing the underground power line with appurtenant equipment in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land located in the Northeast Quarter (NE 1/4) of Section 35, Township 21 North, Range 3 East, W.M., being 10.00 feet in width, lying 5.00 feet on each side of the following described line:

Commencing at the intersection of the

center line of Alexander Avenue and Lincoln Avenue; thence south 45° 53' 00" east, along the center line of Alexander Avenue, 514.00 feet; thence north 44° 07' 00" east, 50.00 feet; thence north 36° 38' 22" east, 10.09 feet to the northeasterly right-of-way line of Alexander Avenue and the beginning of said described line; thence continuing north 36° 38' 22" east, 151.28 feet to the end of said described line.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for replacing, installing or repairing underground power lines and appurtenant equipment. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this ten (10') foot permanent easement provided however, that piling supports, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or

similar technology to drive piling supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.

4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes that Easement No. 9466, dated October 24, 1985, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 8511270317, which former easement will be released by the CITY OF TACOMA to be effective the same time as this herein deed becomes effective.

Public Works Storm Sewer E-5291

Reserving to the City of Tacoma Department of Public Works, Sewer Utility Division, a thirty (30') foot non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, reconstructing, inspecting, operating, repairing and maintaining an underground storm drain line and appurtenances, together with a construction easement which allows the right to enter upon property, contiguous to the below described parcel, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing the storm drain line and appurtenances in, over, under, along and across the following described real property, situate in the County of Pierce, State of Washington, to-wit:

PARCEL "A": The East 30 feet of the West 98 feet of the following described tract:  
Beginning at a point South 56038'39" East 89.5 feet from the meander corner between

Sections 26 and 27, Township 21 North, Range 3 East of the Willamette Meridian, which is the point where the right-of-way boundary of East Side Drive intersects the meander line; thence due South 80 feet; thence South 88° 00'13" East 300 feet; thence due North 70.376 feet to intersection with the meander line; thence South 80°58'38" West 219.73 feet; thence North 56°38'39" West 99.193 feet along meander line to point of beginning, being part of Block 4 of "STATE LAND COMMISSIONER'S REPLAT OF BLOCKS 13 to 48 both inclusive, TACOMA TIDELANDS, formerly in King County, sometimes known as ASHTON REPLAT, as per map thereof filed for record December 23, 1918 in the office of the County Auditor.

PARCEL "B": The East 30 feet of the West 98 feet of the following described tract: All of the following described tract lying South of East Side Drive: Beginning at the Northwest corner of Lot 1 in Section 26, Township 21 North, Range 3 East of the Willamette Meridian; thence South 1°03'05" East 470.38 feet to meander corner and Southwest corner of Lot 1; thence South 56° 38'39" East 188.693 feet; thence North 80° 58'30" East 219.73 feet; thence North 9.624 feet to South line of East Side Drive; thence South 88°14' East 77.528 feet to a point 451.50 feet East of projected West line of said Lot 1; thence North 1°03'15" West 525 feet, more or less, to North line of said Lot 1; thence North 89°33'18" West 451.50 feet along the North line of said Lot 1 to point of beginning. EXCEPT therefrom 100 foot right of way for East Side Drive.

Further, permission is granted to enter upon

and utilize for the purposes mentioned above, access to property "as reasonably needed", contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said line. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this thirty (30') foot permanent easement provided however, that piling supports, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or similar technology to drive piling supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or

City's successor, then this easement shall be of no force or effect.

2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations under owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes that easement No. 5291, dated April 30, 1960, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 1890257, which former easement will be released by the City of

Tacoma to be effective the same time as this  
herein deed becomes effective.

Light Division Anchor and Guy Wire Easement

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten-foot (10') non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, reconstructing, and maintaining poles, anchors, transformers and guy, service and distribution wires together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing poles, anchors, transformers and guy, service and distribution wires, together with the right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land 10 feet in width, five feet on each side of the centerline described as follows:

Commencing at the intersection of the Northwesterly right-of-way line of East 11th Street at the Southeast corner of Block 4 "A", as the same is designated on the re-plat of Blocks 13 to 48, Tacoma Tide Lands, King County Annex, known as "Ashton's Re-plat" which plat was filed for record in the office of said County December 23, 1918, said Point of beginning being on the North line of Hylebos Waterway; thence North 68°02'18" West along said North line of Hylebos Waterway 1513.81 feet to and angle point in said North

line; thence continuing along said North line, North 45°55'01" West, 1580.4 feet; thence North 44°05'54" East 420.03 feet to a point on the Southwesterly margin of Marine View Drive in the Northeast Quarter of Section 27, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington. Thence Northwesterly along the Southwesterly Right-of-Way line of Marine View Drive, 91 feet to the point of beginning of this description; thence South 30°24'57" West 10 feet.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said poles, anchors, transformers and guy, service and distribution wires. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent structures will be constructed on or across this ten (10') foot permanent easement.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement

shall be of no force or effect.

2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

Light Division Anchor and Guy Wire Easement

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten-foot (10') non-exclusive right-of-way easement for the purpose of exercising the perpetual right and

privilege of constructing, reconstructing, and maintaining poles, anchors, transformers and guy, service and distribution wires together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing poles, anchors, transformers and guy, service and distribution wires, together with the right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land, 10 feet in width, five feet on each side of the centerline described as follows:

Commencing at the intersection of the Northwesterly right-of-way line of East 11th Street at the Southeast corner of Block 4 "A", as the same is designated on the re-plat of Blocks 13 to 48, Tacoma Tide Lands, King County Annex, known as "Ashton's Re-plat" which plat was filed for record in the office of said County December 23, 1918, said Point of beginning being on the North line of Hylebos Waterway; thence North  $68^{\circ}02'18''$  West along said North line of Hylebos Waterway 1513.81 feet to and angle point in said North line; thence continuing along said North line, North  $45^{\circ}55'01''$  West, 1580.4 feet; thence North  $44^{\circ}05'54''$  East 420.03 feet to a point on the Southwesterly margin of Marine View Drive in the Northeast Quarter of Section 27, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington. Thence Northwesterly along the

Southwesterly Right-of-Way line of Marine View Drive, 437 feet to the point of beginning of this description; thence South 56° 59'07" West 15 feet.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said poles, anchors, transformers and guy, service and distribution wires. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent structures will be constructed on or across this ten (10') foot permanent easement.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.

3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

Light Division Anchor and Guy Wire Easement

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten-foot (10') non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, reconstructing, and maintaining poles, anchors, transformers and guy, service and distribution wires, together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing poles, anchors, transformers and guy, service and distribution wires, together with the

right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land 10 feet in width, five feet on each side of the centerline described as follows:

Commencing at the intersection of the Northwesterly right-of-way line of East 11th Street at the Southeast corner of Block 4 "A", as the same is designated on the re-plat of Blocks 13 to 48, Tacoma Tide Lands, King County Annex, known as "Ashton's Re-plat" which plat was filed for record in the office of said County December 23, 1918, said Point of beginning being on the North line of Hylebos Waterway; thence North  $68^{\circ}02'18''$  West along said North line of Hylebos Waterway 1513.81 feet to and angle point in said North line; thence continuing along said North line, North  $45^{\circ}55'01''$  West, 1580.4 feet; thence North  $44^{\circ}05'54''$  East 420.03 feet to a point on the Southwesterly margin of Marine View Drive in the Northeast Quarter of Section 27, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington. Thence Northwesterly along the Southwesterly Right-of-Way line of Marine View Drive, 540 feet to the point of beginning of this description; thence South  $66^{\circ}46'10''$  West 15 feet.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas.

The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said poles, anchors, transformers and guy, service and distribution wires. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent structures will be constructed on or across this ten (10') foot permanent easement.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and

related facilities within the easement area.

Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.

4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

#### Fire Hydrant Easement

Reserving to the City of Tacoma Department of Public Utilities, Water Division, a ten (10') foot non-exclusive right-of-way easement for purpose of exercising the perpetual right and privilege of installing, reinstalling, and maintaining a fire hydrant and other appurtenances, together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing fire hydrants, together with the right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land 10 feet in width, five feet on each side of the centerline described as follows:

Commencing at the intersection of the Northwesterly right-of-way line of East 11th

Street at the Southeast corner of Block 4 "A", as the same is designated on the re-plat of Blocks 13 to 48, Tacoma Tide Lands, King County Annex, known as "Ashton's Re-plat" which plat was filed for record in the office of said County December 23, 1918, said Point of beginning being on the North line of Hylebos Waterway; thence North 68°02'18" West along said North line of Hylebos Waterway 1513.81 feet to and angle point in said North line; thence continuing along said North line, North 45°55'01" West, 1580.4 feet; thence North 44°05'54" East 420.03 feet to a point on the Southwesterly margin of Marine View Drive in the Northeast Quarter of Section 27, Township 21 North, Range 3 East of the Willamette Meridian, Pierce County, Washington. Thence Northwesterly along the Southwesterly Right-of-Way line of Marine View Drive, 566 feet to the point of beginning of this description; thence South 69°14'21" West 10 feet.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said fire hydrants. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent structures will be constructed on or across this

ten (10") foot permanent easement.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the

relocation of the City's utility under this paragraph.

Light Division Overhang E-6038

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten (10') foot, non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of extending distribution wires, together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing distribution wires, together with the right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

The South 10 feet of the East 400 feet of the described property:

Commencing at the Southeast corner of the Northeast quarter (NE 1/4) of the Southeast quarter (SE 1/4) of Section 36, Township 21 North, Range 3 East of the W.M., thence Westerly along the Southerly line of said Northeast Quarter of the Southeast Quarter, a distance of 230.309 feet to a point on the Westerly right-of-way line of Marine View Drive, as it is now dedicated; thence on an angle to the right of 88°35'58" on a bearing of North 01°57'22" West along the right-of-way line a distance of 707.625 feet to the P.C. of a curve to the left having a radius of 904.93 feet and a central angle of 50° 46'00"; thence following the arc of said right-of-way curve to the left a distance of

40.741 feet to the Northeast corner of parcel of land conveyed to Streich Brothers Engineering Company as recorded under Auditor's Fee No. 2201304 dated August 10, 1967, and the true point of beginning of this description; thence continuing along the arc of said right-of-way line curve to the left a distance of 657.162 feet to the Northeast corner of a parcel of land conveyed to the Starlet Corporation as recorded under Auditor's Fee No. 2227796 dated February 23, 1968; thence on an angle to the left on a bearing of South  $41^{\circ}44'25''$  West a distance of 636.138 feet to a point on the government pierhead line of Hylebos Waterway; thence on an angle to the left on a bearing of South  $48^{\circ}15'35''$  East, following said government pierhead line a distance of 123.420 feet to a point; thence on an angle to the right, on a bearing of South  $03^{\circ}15'35''$  East following said government pierhead line a distance of 58.584 feet to a point; thence on an angle to the left, on a bearing of North  $86^{\circ}44'25''$  East a distance of 604.18 feet to the true point of beginning of this description.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas.

The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said distribution wires. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may

immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed under this ten (10') foot permanent easement provided however, that piling supports, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or similar technology to drive piling supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.

3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes that easement No. 6038, dated March 8, 1967, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 2181657, which former easement will be released by the City of Tacoma to be effective the same time as this herein deed becomes effective.

Light Division Powerline Easement E-6151

Reserving to the City of Tacoma Department of Public Utilities, Light Division, a ten-foot (10') non-exclusive right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, reconstructing, and

maintaining poles, anchors, transformers and guy, service and distribution wires, together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing poles, anchors, transformers and guy, service and distribution wires, together with the right to trim and keep trimmed all danger trees in, under, over, along and across the following real property situate and being in the County of Pierce and State of Washington, described as follows, to-wit:

A strip of land 10 feet in width, the centerline of which is described as follows:

Commencing at the intersection of the center line of Taylor Way and the West line of the East half (E 1/2) of the Southwest quarter (SW 1/4) of the Southeast quarter (SE 1/4) of Section 36, Township 21 North, Range 3 East, W. M., thence South 0142'43" West 65.22 feet to the Southerly line of Taylor Way; thence South 49° 20' 07" East along said Southerly line 6.52 feet to the TRUE POINT OF BEGINNING; thence South 0° 42' 43" West parallel to the West line of the East half (E 1/2) of the Southwest quarter (SW 1/4) of the Southeast quarter (SE 1/4) of said Section 647.92 feet more or less to the South line of said Section 36.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way within the temporary construction easement areas. The permission for the use of said additional "as reasonably needed" area shall extend only for such

period of time as is necessary for installing, repairing or replacing said line. The City shall cooperate with owner in scheduling access to such property unless an emergency exists in which case the City may immediately access said property without notifying owner.

It is further agreed that no permanent building structures will be constructed on or across this ten (10') foot permanent easement provided however, that piling supports, railroads, material handling, conveyor systems, utility lines or similar uses shall be allowed and shall not be deemed permanent structures within the meaning of this easement. Owner, without any charge or costs imposed by the City, may construct piling within the City's easement. Owner will use extra care to assure that no damage comes of constructing within the City's easement. Owner will use water jets or similar technology to drive piling supports within or adjacent to the City's easement. Owner's herein permitted uses within the right-of-way shall not unreasonably compromise or limit the uses of the easement, by the City, intended hereunder or substantially increase the costs of maintenance, repair or replacement of the City's utilities.

This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement shall be of no force or effect.
2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said

easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.

3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes that easement No. 6151, dated January 24, 1968, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 2232418, which former easement will be released by the City of Tacoma to be effective the same time as this herein deed becomes effective.

Belt Line Right-of-Way E-8521

Reserving to the City of Tacoma, Department of Public Utilities, Belt Line Division, a fifteen (15') foot non-exclusive railroad right-of-way easement for the purpose of exercising the perpetual right and privilege of constructing, installing, maintaining and operating railroad tracks and appurtenances for railway purposes, together with a construction easement which allows the right to enter upon property herein described below, from time to time, with reasonable care for inspecting, repairing, altering, modifying, replacing or removing rail tracks and appurtenances in, over, along and across the following described real property, situate in the County of Pierce, State of Washington, to-wit:

A strip of land 15.0 feet in width lying northerly, and contiguous with that portion of East/West Road as constructed and dedicated to the County of Pierce, State of Washington, and recorded under Auditor's Fee No. 2577850, said roadway being described as follows:

LYING WITHIN the following described parcel:

A parcel of land located in the Northeast Quarter of Section 1, Township 20 North, Range 3 East, W.M; described as follows:

Commencing on the East line of vacated Chicago, Rock Island and Pacific Addition, Pierce County, Washington, according to plat recorded in Volume 10 of Plats at page 11, at a point being 350 feet South of the Northeast corner of said plat and the North line of said Section 1; thence South  $88^{\circ}30'22''$  East, parallel with said North line of Section 1, 346.19 feet to the Northwesterly right-of-way line of East/West Road; thence South  $40^{\circ}$

01'05" West along said right-of-way line, 441.21 feet to the extension of the centerline of South 18th Street, according to said plat; thence North 88°47'38" West along said extension, 76.46 feet to the East line of said plat; thence North 02°20'02" East, 345.60 feet to the Point of Beginning.

EXCEPT that part of Port of Tacoma Road contained herein.

EXCEPT that part of Alexander Avenue contained herein.

Further, permission is granted to enter upon and utilize for the purposes mentioned above, access to property "as reasonably needed" contiguous to and adjoining the above right-of-way. The permission for the use of said additional "as reasonably needed" area shall extend only for such period of time as is necessary for installing, repairing or replacing said railway.

Grantor reserves the right to cross at two (2) locations of ingress and egress to be agreed upon by both parties and subject to the track crossing permit language and design requirements of the City of Tacoma, Department of Public Utilities, Belt Line Division .

It is further agreed that no permanent structures will be constructed on or across this fifteen (15') foot permanent easement. This easement is subject to the following conditions:

1. In the event of permanent abandonment of the easement use for a period of five or more consecutive years by the City or City's successor, then this easement

shall be of no force or effect.

2. The City of Tacoma shall, at its sole expense, restore, repair and reconstruct the surface and improvements within said easement and adjacent areas if the same is damaged or removed for repairs or modifications to the City's line.
3. The City of Tacoma agrees that to the extent of its negligence, it will save harmless the property owner and owner's successors in interest from all claims, suits, actions, liability, loss and damages resulting from the construction, operation, maintenance, repair or reconstruction of the City's utility and related facilities within the easement area. Provided, however, this indemnification is not applicable to any permanent building structures installed by property owner and/or owner's successors in interest within the easement area.
4. Owner specifically reserves the right to request and require the City to relocate its utility facilities within a mutually agreed reasonable period of time to other locations on owner's property. Owner will pay all costs associated with the relocation of the City's utility under this paragraph.

This easement reservation replaces and supercedes that portion of easement No. 8521, a portion of Exhibit "C-9", dated February 3, 1981, and recorded in the office of the Pierce County Auditor under Auditor Fee No. 8102030208, which former easement portion

lying within the Southeasterly 15 feet of a parcel of land abutting the East/West Road in the Northeast Quarter (NE 1/4) of Section 1, Township 20 North, Range 3 East. W.M., will be released by the City of Tacoma to be effective the same time as this herein deed becomes effective.

EXHIBIT "G"  
EASEMENT  
88-44RWC/E000000  
CORPORATE

XYZ, INC., a corporation organized and existing  
under the laws of the State of

record owner(s) of the premises hereinafter described, for a valuable consideration from  
the City of Tacoma, do(es) grant unto the said City, its successors and assigns, the right  
and privilege to construct and maintain poles, anchors, transformers and guy, service and  
distribution wires in, under, over, along and across the following real property situate and  
being in the County of Pierce and State of Washington, described as follows, to-wit: (see  
attached)

together with the right to trim and keep  
trimmed all danger trees located upon the  
tract of land above described.

It is agreed that the grantor and its successors shall not construct any permanent structures within the  
easement area and shall at all times provide adequate access to the City staff and its contractors, to  
change, repair, renew, or remove said equipment.

IN WITNESS WHEREOF, said company has caused its corporate name  
and seal to be  
hereunto subscribed and affixed and these presents to be  
executed by its  
officers "hereunto duly authorized,  
this    day of   , 19   .

XYZ, INC.

State of Washington )  
)ss.  
County of Pierce )

I certify that I know or have satisfactory evidence that     
signed this instrument  
on oath stated that (he/she/they) (was/were) authorized to execute the instrument and  
acknowledged it as the  
(type of authority)  
of XYZ, INC. to be  
(name of party on behalf of whom instrument was executed)  
the free and voluntary act of such party for the uses and purposes mentioned in the  
instrument.  
S-T-R NE 35-21-3E Map No.  
Date

Reviewed: Notary Public in and for the State of Washington  
by Engineer Notary Public in and for the State of Washington  
residing in Seattle  
Form Approved: My appointment expires  
Assistant City Attorney

Accepted by Director of Utilities

Date (3/90)

88-44RWC/E000000

A strip of land 50 feet in width; 25 feet on each side of the centerline described as follows:

(Insert legal description here.)

Approved: Approved:

Legal Signature Grantor Signature

## COOPERATION AGREEMENT

Twenty years ago, the Puyallup Tribe of Indians (the "Tribe"), the Port of Tacoma (the "Port"), and numerous other governments and private entities entered into a Land Settlement Agreement, an historic event that resolved a number of land, jurisdictional and other issues between the parties. One of the most significant elements of that agreement was the transfer to the Tribe of lands on the Blair Waterway which the parties envisioned would be developed by the Tribe as an international marine terminal. Now, twenty years later, the Tribe, through its economic development corporation, Marine View Ventures, Inc. ("MVV"), has entered into an agreement with SSA Containers, Inc. ("SSA") for that long-awaited development.

The Tribe and the Port agree that both will benefit substantially by working together on existing opportunities and challenges, as well as to create new opportunities that neither may be able to optimize alone. The Port and the Tribe also agree that it is necessary and beneficial to coordinate with MVV and SSA on issues related to permitting terminal development, infrastructure, and numerous other issues that may arise as each party moves forward to develop and utilize facilities on the Blair Waterway and adjacent lands.

The Port and the Tribe have long been neighbors, tied together by both the specific terms they each agreed to in the context of the Land Settlement Agreement, as well as the practical realities of being governments with overlapping areas of jurisdiction. The impending fulfillment of one of the promises of the Land Settlement Agreement, through the development of an international marine terminal on the Tribe's trust lands adjacent to lands owned by the Port of Tacoma, has caused the Tribe and the Port to reflect on their relationship and the ways that it might be strengthened.

To this end, the parties have been meeting for several months to share technical information, design plans, and permitting strategies, and to discuss numerous other issues of mutual concern, and have entered into a Memorandum of Intent effective February 14, 2008 regarding certain land transactions, waterway widening agreement, lease and operating agreements, and cooperation agreements contemplated between them. The parties agree that this cooperation is extremely beneficial to all of them, and should continue and be strengthened in the future. Thus, the Puyallup Tribe of Indians, the Port of Tacoma, Marine View Ventures, Inc., and SSA Containers, Inc. have each determined that it is in the best interests of each and all of them to enter into this Cooperation Agreement.

1. **Mutual Support.** The intent of the Parties is that development of marine terminals on the Blair Waterway has significant benefits for the parties and the economy of the City of Tacoma, County of Pierce, and the State of Washington, and that the parties should cooperate with each other to accomplish this goal. To this end, SSA, the Tribe, MVV and the Port will actively and positively support each other's terminal developments on the Blair Waterway; subject to further explication by the parties, the intent of this provision is that, subject to the qualifications later in this subsection (1),

✓ anything that a party publishes or communicates to a third party on the subject will be in support of the project and will refrain from opposing or criticizing the project. This includes, but is not limited to Berths One through Four being developed for use by SSA and its customers, and the YTTI and East Blair One (former Kaiser facility) terminals being developed by the Port, including but not limited to the Port's goal to open the YTTI terminal for operations by July 2012. In addition, and without limiting the foregoing, the Tribe, MVV and SSA specifically agree that they will not individually or collectively or through any other person seek to or acquire any real property in the footprint of the YTTI terminal or areas for infrastructure that supports terminals on the Blair Peninsula, as shown on Exhibit A. Notwithstanding the foregoing, the parties acknowledge that the Tribe has a vital interest in the health and restoration of the fishery resource, including but not limited to the Tribe's role as a natural resource damage Trustee under CERCLA, and agree that nothing in this Memorandum shall be interpreted to limit the Tribe's discretion when commenting on the impact a project will have on the fishery resource or habitat, including but not limited to actions taken in its role as an NRD Trustee. Nothing in this paragraph shall be construed to limit any party from negotiating with, or entering into agreements with, any third party concerning the ownership or use of such party's facilities. SSA and the Port of Tacoma as project proponents for their respective projects agree to not make any comments on permit-related issues that are adverse to each others' projects.

2. **Permitting and Development.** The Parties recognize that issues may arise in the permitting and development of those terminals and commit to developing a process for completely resolving disputes as they are identified (the process will include prompt informal discussion between the Parties, and mediation as necessary).

3. **Media Coordination.** SSA, the Tribe, MVV and the Port agree to publicly and jointly announce their agreement to cooperate and mutual support of each others' terminal developments.

4. **Technical Information Sharing.** SSA and the Port agree to share engineering and design plans and other information necessary to avoid future conflicts, optimize transportation and infrastructure development, and create efficiencies for the terminals, and SSA will rely on this agreement to obtain such information and shall not make requests for such information under federal or state laws relating to freedom of information or public records unless the Port fails to provide information as required by this agreement.

5. **Project Coordination.** SSA and the Port agree to meet to plan how each party will achieve their permitting goals. SSA and the Port agree to cooperate to assist each other in achieving their individual goals. It is agreed that each of their engineering and permitting teams will meet to share information and will look for opportunities to assist each other in moving their respective projects forward. The Port and SSA each recognize that these plans will change as circumstances dictate, and agree to meet on a regular basis throughout the projects' planning process.

6. **Intermodal Service.** Intermodal service is critical to both projects, and SSA, the Tribe, MVV and the Port agree to meet and discuss how the parties will handle their intermodal requirements. It is SSA's intention to negotiate with the Port, and one or more of the Class 1 railroads, to determine the preferred solution for intermodal service. The three primary intermodal yards that currently seem to provide the best options for intermodal solutions include conversion of the BNSF Log Yard to intermodal loading capacity; Negotiating a Use Agreement for the Port of Tacoma South Intermodal Yard; and Negotiating a Use Agreement or Investment Agreement in the proposed Taylor Avenue Intermodal Yard. SSA may end up with agreements or capacity allocations at all three locations, and agrees to work with the Port of Tacoma to ensure that the overall capacity for intermodal service serving the Port of Tacoma complex is increased. All parties agree that an efficient and reliable intermodal rail system within the Tacoma tideflats is a critical competitive issue for all terminal operators at the port. To that end, the Port and SSA will work together to maximize the efficiency of the intermodal system. It is in both SSA's and the Port's interest to increase the overall capacity of the system serving the terminals.

7. **Road Infrastructure.** Road Infrastructure will need various improvements and capacity expansion as volumes increase with the new terminal development. The parties agree that it is important to all the parties that access to the Blair Peninsula is maintained or improved over time, and that infrastructure improvements can be beneficial to all parties. To that end, the Port and SSA will work together to maximize the efficiency of the infrastructure system. All parties agree to cooperate to access and leverage available public/private funding sources to be used to develop additional infrastructure to support the terminal operations and increase the economic development on the Blair Peninsula. The parties agree to negotiate in good faith to determine the contributions that each party would provide to help fund the basic infrastructure. Contribution amounts negotiated would be generally based on the incremental increases (over an agreed upon baseline amount) in traffic generated by the respective parties. Unilateral decisions by either party to invest in infrastructure will not compel the other parties' investment.

8. **Future Cooperation.** The parties agree that, as neighbors on the Blair Waterway, numerous opportunities for cooperation and coordination may arise in the future, including but not limited to performing a cutback that achieves a contiguous berth at the north end of the Tribe's Blair Waterway property. The parties agree to meet as necessary or desirable to explore such opportunities, and agree that, if they choose to pursue such opportunities, they will consider additional exchanges of value, such as leases and/or land exchanges as appropriate.

9. **Waiver of Sovereign Immunity.** The Tribe hereby enters into a limited waiver of its sovereign immunity from suit for the purpose, and only for the purpose, of allowing the other parties to this Agreement to seek enforcement of the Tribe's responsibilities and obligations created by this Agreement. This waiver is effective only as to an action brought by the other parties to this Agreement, only in Pierce County Superior Court and in the appellate courts of the State of Washington (and

mediation or arbitration in Pierce County to the extent agreed to by the Tribe), and only for the relief of (a) specific performance of the Tribe's responsibilities and obligations created by this Agreement, including its financial obligations, and/or (b) declaratory judgment determining and declaring the parties' responsibilities and obligations under this Agreement, and/or (c) enforcement of any order or judgment regarding any of the above. This limited waiver of the Tribe's sovereign immunity from suit shall expire upon the completion of the parties' responsibilities and obligations created by this Agreement.

IN WITNESS WHEREOF, the parties by their signatures below confirm the mutual agreements set forth in this Agreement.

**THE PORT OF TACOMA**

By: Richard Maynard  
Title: President Port of Tacoma  
Date: 4/22/08

**THE PORT OF TACOMA**

By: Jeff Null  
Title: Executive Director  
Date: 4/22/08

**PUYALLUP TRIBE OF INDIANS**

By: Human Dillashaw  
Title: Chairman  
Date: 4/22/08

**MARINE VIEW VENTURES, INC.**

By: CG  
Title: CEO  
Date: Apr. 22<sup>nd</sup> 2008



**SSA CONTAINERS, INC.**

By: John P. L.  
Title: VP - General Counsel  
Date: 4/22/08

EXHIBIT A

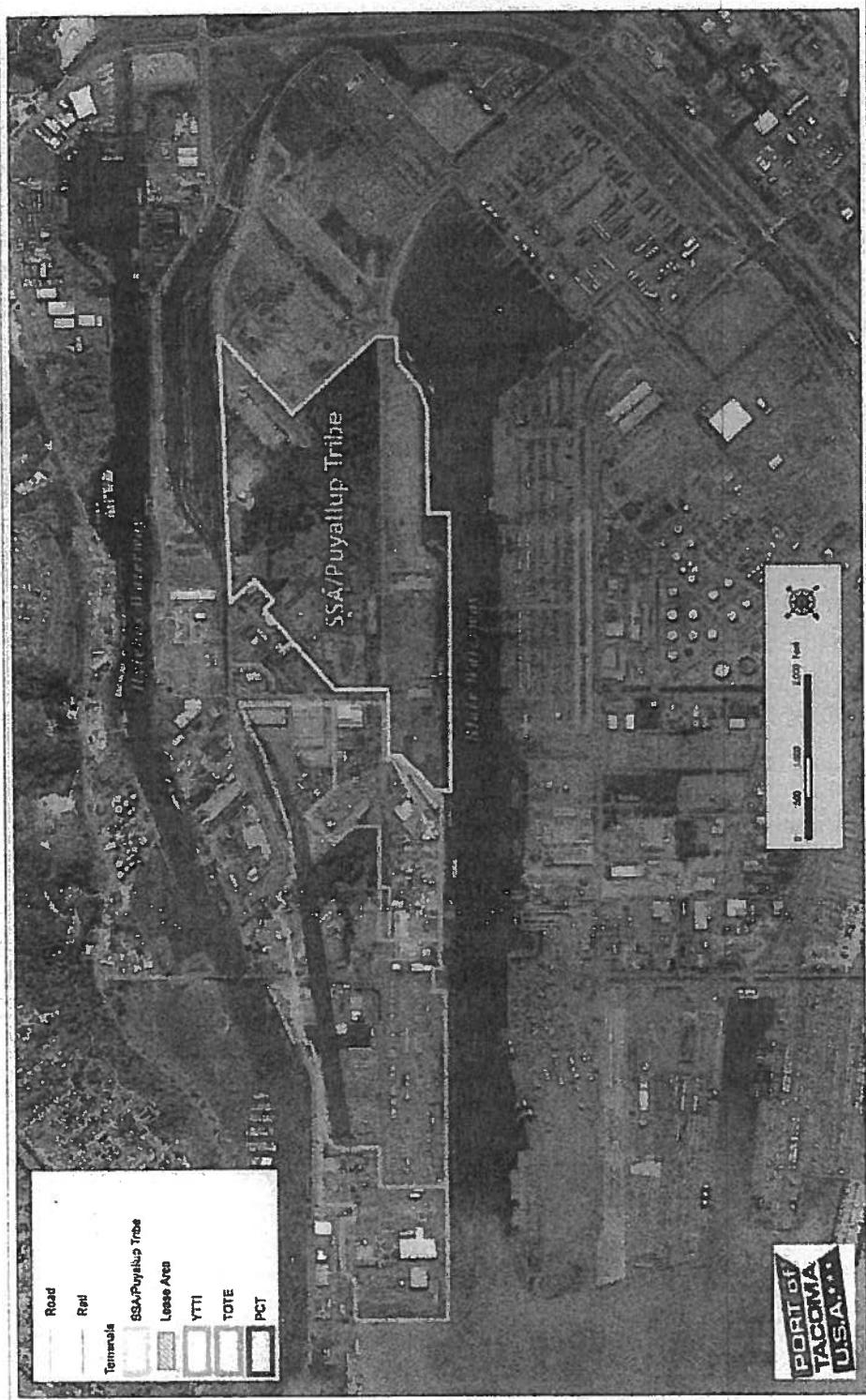


EXHIBIT A  
COOPERATION AGREEMENT