

# Inter-local Agreement between the Muckleshoot Indian Tribe and Port of Seattle

The Port of Seattle, a Washington municipal corporation (“Port”), and the Muckleshoot Indian Tribe, an Indian Tribe recognized by the federal government of the United States (“Tribe”) agree that the Tribe shall provide services to assist with coordination of Treaty fishing access and vessel arrivals and departures at the Port’s marine terminal facilities as provided herein. This Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 2010.

## I. Purpose of Agreement

Consistent with RCW 39.34.080, the purpose of this Agreement is to permit the Port and Tribe to make the most efficient use of their powers and resources by enabling them to cooperate on matters of mutual importance, take advantage of efficiencies and economies of scale, and make use of staff resources and established programs for providing and obtaining services. This Agreement is designed to set forth the understanding, rights and responsibilities of the parties as follows.

## II. Powers/Legal Authorities

### Port’s legal authority

As a limited purpose local government, the Port derives its legal authority to act from its enabling statutes, Title 53 RCW, and the Revised Airports Act, Chapter 14.08 RCW.

The Legislature authorized the establishment of port districts for the purposes of “acquisition, construction, maintenance, operation, development and regulation” within the district of harbor improvements, industrial improvements, terminal facilities, as well as commercial transportation, transfer and storage facilities. See RCW 53.04.010. The Legislature’s intent in authorizing the establishment of port districts was to encourage and develop industry, construct cargo and passenger infrastructure, and promote trade.

Under RCW 53.08.020, port districts are specifically authorized to acquire, construct, maintain, and operate a system of harbor improvements, rail and water transfer and terminal facilities, air transfer, or terminal facilities, other storage and handling facilities, administrative areas and improvements relating to industrial and manufacturing activities within the port district.

The Port has the authority to enter into agreements with other government entities to support and facilitate the operation of Port facilities.

### Tribe’s legal authority

As a federally recognized Indian tribe, the Tribe owns property, develops and maintains facilities, and manages programs for the benefit of Tribe members. With particular regard to fishing activities, the Tribe is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132, in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The Tribe manages and regulates the exercise of these treaty reserved fishing rights at its usual and accustomed fishing grounds and stations which have been determined to include the Duwamish Waterway, the East and West Waterways and portions of

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Elliott Bay. *United States v. Washington*, 384 F.Supp. 312, 365 – 367 (W.D.Wash. 1974); *see also*, *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp 1504 (W.D.Wash. 1988).

The Tribe has the authority under its laws to enter into contracts with municipalities to provide services benefiting its interests.

### **III. Objectives of Agreement**

The Tribe and the Port have agreed that continued successful Treaty fishing access and marine cargo and passenger vessel access in areas where Treaty fishing and Port operations overlap is mutually beneficial. Experience in recent years indicates that actions taken to avoid conflicts between Treaty fishing activities and vessels serving Port facilities improves safety, reduces damage to fishing gear, and allows for orderly harvest, while reducing the potential for delays in cargo vessel arrivals and departures.

As required under RCW 39.34.080, each party to this Agreement has legal authority to provide services toward coordination of Treaty fishing and vessel access at the Port's marine terminal facilities.

The objective of this Agreement is to set forth the understanding, rights and responsibilities of the parties with regard to the coordination of Treaty fishing and cargo vessel access at the Port's marine terminal facilities.

### **IV. Scope of Services**

During the fishing season for each year during the term of this Agreement, the Tribe shall provide staff on-site at the locations of chinook, coho, pink and chum fishing activities in Elliott Bay, the East and West Waterways, and the Duwamish Waterway to coordinate fishing activity with vessel movements, such that vessel and fishing gear conflicts are managed and minimized. Coordination activities will include exchange of harvest activity and vessel arrival departure information between the Tribe and the Port, twenty-four hour personnel tasked with alerting fishers and Port operators concerning potential vessel/net conflicts, and coordination with fishers regarding movement of fishing gear to allow for vessel arrivals and departures, where appropriate.

### **V. Rights of Parties**

#### **A. Effective Date of Agreement.**

The Effective Date of this Agreement shall be the date of execution on which the second party to sign has signed the Agreement.

#### **B. Time for Performance.**

Any work performed prior to the effective date of this Agreement, or continuing after the completion date of same, unless otherwise agreed upon in writing herein, will be outside this Agreement and will not be subject to its provisions.

#### **C. Duration.**

The duration of this Agreement shall be from the Effective Date through December 31, 2013.

D. Amendments.

Changes in the scope of this contract which cause an increase or decrease in the cost of, or the time required for the performance of any part of the scope of work under this contract, shall be accomplished by written amendment and executed by both parties prior to implementation.

E. Legal Relationship.

The parties to this agreement execute and implement this agreement solely as the Port and Tribe. No partnership, joint venture or joint undertaking shall be construed from this Agreement.

F. Compensation.

Compensation for all services rendered by the Tribe pursuant to this Agreement, including associated costs, shall be \$256,350.00 per calendar year, subject to an annual inflation adjustment. The compensation for services shall be adjusted annually based on the Consumer Price Index for All Urban Consumers, U.S. City Average, all items (Index), as published by the United States Department of Labor, Bureau of Labor Statistics. The index for September 30 will be used to compute the annual inflation adjustment for the upcoming year. The adjustment will be the percentage increase in the September 30 index from the prior September 30 index. In no event will the Port adjust the compensation for services downward as a result of a change in the index. Also, in no event will a change in the index cause an increase that exceeds five percent per year.

If the index is discontinued or revised during the term of this Agreement, the Port, at its sole option may use such other government index or computation with which it is replaced to obtain substantially the same results as would be obtained if the index had not been discontinued or revised.

The Port shall make payment of the aforesaid compensation within fifteen days of execution of this Agreement for 2010. Thereafter, the Port shall make payment of the aforesaid compensation, subject to annual adjustment as described in this Section, on or before January 15th of the year to which the funds apply. A late charge of 1.5 percent per month on the unpaid balance of any amounts due shall be added to any sums not paid when due under the terms of this Agreement.

The payment shall be mailed or delivered to the Muckleshoot Indian Tribe, Attn: Comptroller, 39015 172<sup>nd</sup> Avenue S.E., Auburn, WA 98092.

**VI. Responsibilities of Parties**

A. Notice.

Any and all notices required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given upon receipt when personally delivered or sent by overnight courier or two (2) days after deposit in the United States mail if sent by certified or registered mail, return receipt requested. All notices shall be addressed to the Port and Tribe at the

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addresses set forth below or at such other addresses as may be specified by one party's notice to the other party:

Port:

Tay Yoshitani, Chief Executive Officer  
Port of Seattle  
P.O. Box 1209  
Seattle, Washington 98111

Tribe:

Tribal Chairperson  
Muckleshoot Indian Tribe  
39015 172<sup>nd</sup> Ave S.E.  
Auburn, WA 98092

B. Coordination between Port and Tribe's on-site coordinators and monitoring staff/Port's Obligation to Supply, Maintain and Repair Workboats and Associated Gear.

The Port and Tribe shall obtain accurate and specific fishing net deployment and vessel traffic information, timely exchange such information, and otherwise cooperate in the coordination activities of the Tribe's on-site coordinators and monitoring staff so as to facilitate both Treaty fishing access and vessel access to berths while minimizing potential conflicts between fishing gear and vessels at the Port's marine terminal facilities. The Port shall provide to the Tribe each Sunday by noon, or such other day and time as may be agreed to by the parties, the following information: Schedule for arrivals and departures as well as berth location information at the Port's terminals for vessels.

C. Temporary Moorage Accommodation for Program Vessels.

The Port shall provide temporary moorage for two Muckleshoot Indian Tribe program vessels at Harbor Island Marina, Terminal 102 during the season for Chinook, coho, pink and chum fishing activities in Elliott Bay and Duwamish Waterway.

D. Port's Obligation to Compensate Fishers for Net Moves.

The Muckleshoot Indian Tribe and the Port agree to continue to exchange accurate and specific fishing net deployment and vessel traffic information with the objective of avoiding and minimizing potential net and cargo vessel conflicts at Port facilities. However, based on past experience it is appropriate to anticipate instances when changes in time and berth location information may conflict with Treaty fishing. The Port agrees to directly compensate fishers \$350 for moving a set- or drift-net to accommodate the arrival or departure of a vessel at a Port facility. In order to facilitate an accurate understanding of scheduled vessel arrivals, departures, and berth locations, the Port agrees to provide a weekly schedule with this information to the Tribe each Sunday by 12:00 p.m., or such other day and time as may be agreed by the parties. Each net move case requires verification of the location of the incident, using applicable marine cargo site location plots provided by the Port. The Port agrees to make

net move payments directly to the affected fishers identified in the documentation within fifteen (15) business days of receipt of documentation of a net move covered by this provision. This agreement applies to the chinook, pink, coho, and chum fisheries.

**E. Port's Obligation to Replace Fishing Gear Damaged by Cargo Vessel Operations and Pay Fishers for Lost Fishing Time.**

In the event that any Tribal set and drift net gear and any other gear is damaged as a result of cargo vessel operations headed to or originating at Port facilities, the Port shall replace the damaged gear and directly compensate fishers for two (2) lost days of fishing time. Compensation for lost fishing time shall be based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, the day of the gear damage or loss and the following day.

To facilitate this provision and avoid loss of fishing time, the Port will acquire set and drift-nets before the beginning of each fishing season and use the stockpiled nets to replace nets lost due to cargo vessel operations en route to or from Port facilities. In the event the Port is not able to replace damaged gear, the Port agrees to compensate the fisher directly for the replacement value of the gear. The Port agrees to make payments directly to fishers identified in gear loss documentation presented to the Port within fifteen (15) business days of receipt of documentation from the fisher for lost time covered by this provision. As with net move incidents, compensation for damaged fishing gear and lost fishing time requires verification of the location of the incident, using applicable marine cargo site location plots provided by the Port.

**VII. Miscellaneous**

**A. Entire Agreement.**

This document contains the entire and integrated contract between the parties, and no statement, promise, inducement or agreement made by the parties or their agents or employees that is not contained in this written Agreement shall be valid or binding. No alteration, addition, or modification of any of the terms or conditions of this Agreement shall be effective if not in writing and signed by the authorized representatives of the Port and Tribe.

**B. Severability.**

In the event any portion of this Agreement shall be found to be invalid by any court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement unless the court of competent jurisdiction rules that the principal purpose and intent of this Agreement should and/or must be invalidated.

**C. Authority to execute Agreement.**

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

**D. Counterparts.**

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This Agreement may be executed in separate counterparts, all of which shall be construed as a single integrated instrument. Facsimile and digitally-scanned signatures shall be valid and binding with the same force and effect as the original signatures.

### E. Third Party Beneficiaries

There are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any person or entity that is not a Party hereto.

F. The Muckleshoot Indian Tribe and the Port agree that nothing in this agreement is intended to or should be construed to define the nature and scope of Treaty fishing rights.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement by action of their authorized representatives.

**MUCKLESOOT INDIAN TRIBE**

**PORT OF SEATTLE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Name & Title

Date \_\_\_\_\_

Date \_\_\_\_\_