

**AGREEMENT BETWEEN
MUCKLESHOOT INDIAN TRIBE, NORTHWEST SEAPORT ALLIANCE,
AND PORT OF SEATTLE**

Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project

This letter of agreement (“Agreement”) confirms the understanding and commitments between the Muckleshoot Tribe (“Tribe”), a federally recognized sovereign Indian Tribe, the Northwest Seaport Alliance (“NWSA”), a port development authority, and the Port of Seattle (“Port”), a Washington State port district, regarding construction activities relating to rehabilitating the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (“Project”) in Seattle. The Project activities include in-water piling demolition, installing pier-strengthening and slope-stabilization piling, and berth-deepening dredging. The details of the Project activities and the locations for the activities are contained in project design drawings submitted with Building Permit # MC-0318308 (“Building Permit”) application to the City of Seattle. The Project affects an existing 2900 feet long marine cargo pier, located in southwest Elliott Bay, at the west margin of the West Waterway. The Port and NWSA recognize the Tribe’s rights to fishing established by the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132 (collectively, “Treaty”).

The Tribe, the NWSA, and the Port agree as follows:

- (1) There will be no Project construction activities during the time periods designated by local, state, and federal agencies for protection of salmon fisheries in Elliott Bay and the lower Duwamish River. The Project will be subject to all other permit conditions and permit approval requirements relating to fish and wildlife habitat protection.
- (2) In-water construction for the Project is expected to take place during three consecutive years. Wharf rehabilitation construction activities will take place from August through February of the first two construction seasons, subject to state and federal agency in-water construction timing requirements. The third construction season is expected to be limited to vessel berth dredging, conducted in the late fall and winter months for the purpose of minimizing potential disruption of the Tribe’s Treaty fishing access. During each construction season, Terminal 5 wharf rehabilitation project work will be stopped during prescribed Chinook Treaty fishing periods. The Tribe will provide at least one month prior notification of the dates for opening and closure of the Chinook fishing periods.
- (3) Construction activities will include multiple crane equipment barges and materials barges, accompanied by tug-assisted barge movements to and from Terminal 5. The details of the Project activities and the locations for the activities are contained in Project design drawings submitted with Building Permit application to the City of Seattle. The NWSA and the Port agree that potential disruption of Treaty fishing activities due to the Project, outside the construction area depicted on the Project drawings submitted as application materials for the Building Permit, will be compensated consistent with the

existing Muckleshoot Indian Tribe, Port of Seattle, and Northwest Seaport Alliance, Maritime Access and Impact Mitigation Agreement. (“Existing Agreement”)

- (4) The NWSA and the Port will collectively transmit \$1,000,000 to the Tribe for the purpose of establishing a Fisheries Mitigation Fund in response to potential Project construction-related Treaty fishing disruption. The Fisheries Mitigation Fund will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe. These funds will be transferred to the Tribe within 10 days of the construction authorization of the Project. The check will be made payable to the Tribe and mailed to:

Jeff Songster, Comptroller
Muckleshoot Indian Tribe
39015 172nd Avenue Southeast
Auburn, Washington 98092

- (5) The NWSA and the Port will collectively provide \$75,000 per year for three fishing seasons (2017-2019) for use in establishing a new pilot program (“Pilot Program”) to compensate tribal members who are displaced from a productive net set location by a vessel movement in or out of a Port or NWSA facility in Elliott Bay and the East and West Waterway, and who subsequently cannot establish a similarly productive set elsewhere. The Pilot Program will begin within 10 days of the execution of this Agreement when \$75,000 for the 2017 season is transmitted to the Tribe. The Tribe agrees that compensation paid to tribal members under the Pilot Program will be based on verifiable data with respect to the following: (a) the availability of a different net set location and (b) productivity of the displaced net set location and the relocated net set location.
- (6) Pilot Program Funding. The NWSA and Port agree to replenish funds as needed to fully cover all valid claims. The Tribe will notify the NWSA and Port when the fund balance reaches \$20,000 or less, so that the NWSA and Port can provide sufficient funds to replenish the fund to its original account balance. Any unspent funds remaining after all documented withdrawals have been made for annual fishing season shall carry-over for the next fishing season for this same purpose up to the end of the Pilot Program. At the conclusion of the annual fishing season, the Tribe will notify the NWSA and Port of any additional funds needed to replenish the initial account balance to \$75,000 prior to the beginning of the next annual fishing season. Any balance of funds established for claims processing that remains after addressing any incidents through December 31, 2019 will be returned to the NWSA and the Port unless the term of this Agreement has been extended by mutual agreement. The funds for the Pilot Program will be managed solely by the Tribe. Expenditures from the fund shall be made at the sole discretion of the Tribe.
- (7) Summary Reporting of Incidents to the NWSA and Port. As part of this Pilot Program, the Tribe agrees to provide a monthly summary report of claims made during the fishing season that includes the number of net relocation claims associated with each NWSA and

Port marine terminal and the lost productivity claims of tribal members from relocating net set locations as described in Section 5 above.

- (8) The parties will review the Pilot Program after completion of the term of the program to determine efficacy of the program and discuss the continuation of the Pilot Program after December 31, 2019.
- (9) The Existing Agreement has a five-year term (2016-2020) that may be extended for an additional five-year period. The parties will revise the Existing Agreement to replace the five year extension with a ten-year extension, at the close of the Existing Agreement's original term, subject to the parties' discussion and approval of an amendment to the Existing Agreement.
- (10) The Tribe will transmit a letter to the U.S. Army Corps of Engineers, referencing the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD), stating that the Tribe does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than 10 business days following execution of this Agreement by all parties.

This Agreement relates solely to the Terminal 5 Cargo Wharf Rehabilitation, Berth Deepening, and Improvements Project (U.S. Army Corps of Engineers Reference Number NWS-2015-0269-WRD). The ten elements of this Agreement represent the entire scope of the agreement of the parties with respect to its subject matter. This Agreement does not preclude the Tribe from pursuing any violations of local, state, or federal authorizations applicable to the Project. The Tribe is not precluded from commenting on or challenging any modification of the Project with the potential to alter the scope of potential adverse effects on the Tribe. The Tribe, the NWSA, and the Port further agree that nothing in this Agreement is intended to or should be construed to define the nature and scope of Treaty fishing rights.

DATE: _____

MUCKLESHOOT INDIAN TRIBE

THE NORTHWEST SEAPORT
ALLIANCE

by _____
Its _____

by _____
Its _____

PORT OF SEATTLE

by _____
Its _____

DRAFT