

**IMPLEMENTATION AGREEMENT NO. 1
BETWEEN THE LUMMI NATION AND THE PORT OF BELLINGHAM**

The Parties ("Port" and "Lummi Nation") enter into this Implementation Agreement No. 1 ("Agreement No. 1") on the _____ day of August, 2009, for the purpose of addressing specific short-term goals and objectives arising from the Parties' Intergovernmental Framework Agreement (the "Framework Agreement") and their mutual desire to work cooperatively to implement Bellingham Bay clean-up and redevelopment. The Parties agree that, when executed by both Parties, this Agreement No. 1 shall be Addendum No.1 to the Framework Agreement and shall be interpreted and implemented consistent with the terms of the Framework Agreement.

Term: The Parties intend that the term of this Agreement No. 1 shall continue until the execution of Implementation Agreement No. 2, at which time it is anticipated that the unfulfilled items herein will be incorporated into Implementation Agreement No. 2. Notwithstanding the foregoing, all promises or covenants contained herein shall survive termination until fully performed.

Purpose: The Parties shall cooperate during the term of Agreement No. 1 to accomplish the goals and tasks set forth below and shall perform due diligence on matters that will be addressed in subsequent implementation agreements.

A. Responsibilities and Obligations of the Port in Agreement No. 1:

1. **2009 Moorage Credit.** The Port will credit to Lummi Nation fishers a total of \$60,000 for the calendar year 2009, and \$60,000 for calendar year 2010, to be applied to eligible moorage bills at any Port facilities. The Lummi Nation will be responsible for identifying eligible Lummi fishers and allocating the \$60,000 credit amongst them each calendar year. Moorage credits will be applied to the linear footage of dock space; additional rafting for Lummi vessels will be allowed at no additional charge. Rafting will be undertaken in such a manner as to not impede the operation of the marina as reasonably determined by the Port. The Lummi Nation will, prior to utilizing the Port facilities under this Agreement No. 1, provide evidence of blanket liability insurance coverage satisfactory to the Port. The Lummi Nation will regularly provide evidence of ongoing liability insurance coverage satisfactory to the Port, such that there is no lapse in coverage. If the Nation does not provide such evidence of coverage, Lummi fishers covered by this provision will be required to provide proof of insurance or be excluded from Port facilities. Lummi fishers will comply with all harbor rules to be eligible for the credit. The \$60,000 credit per calendar year is indexed to the moorage rates in effect as of February 19, 2009. Notwithstanding the expiration of this Agreement No. 1, the moorage credit will continue through calendar year 2010.
2. **Deferral of Past Due Moorage.** The Port will defer the resolution of past due moorage bills of Lummi fishers in the approximate amount of \$126,000 to later agreement with the Lummi Nation, but in no event later than June 1, 2010. The individual fishers who have

incurred the past due balances will be eligible to return to the Port's facilities during the term of this Agreement No. 1. Lummi fishers will comply with all harbor rules to be eligible for the deferral.

3. Payment for Technical Expertise and Support. The Port will provide the Lummi Nation a payment of \$50,000, within thirty (30) days of the effective date of this Agreement No. 1, for technical support services to be provided by the Lummi Natural Resources Department staff during the term of this Agreement No. 1. It is contemplated that such technical services will assist the Parties in accomplishing the goals and objectives described below in Section C.
4. NOAA - Small Business Contracts. The Port will support the Lummi Nation's efforts to work with NOAA to promote Small Business Administration Section 8(a) sole source and other contracts for the Lummi Nation.
5. NOAA Research Opportunities. The Port will support the Lummi Nation Department of Natural Resources' efforts to work with NOAA to promote opportunities for NOAA research.
6. Bellingham Bay PSDDA Site. The dredge material from Port projects will not be placed in the Bellingham Bay PSDDA site and the Port will support the permanent closure of the Bellingham Bay PSDDA Site.
7. JARPA for the Whatcom Waterway Site. At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's Joint Aquatic Resources Protection Applications (JARPAs) and all associated documents for the short-term and long-term elements of the *Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project*, which is Project No. 3 in Exhibit B to the Framework Agreement. The Port recognizes that until further agreement, the Lummi Nation will be free to oppose the Port's permit application. The Port agrees that, in light of ongoing negotiations, the Lummi Nation may reserve its right to later comment on the Port's JARPAs for the project.
8. JARPA for the Gate 3 Dredging Project. At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's JARPA and all associated documents for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging*, which is Project 10 in Exhibit B to the Framework Agreement.
9. JARPA for the Fairhaven Drydock Project. The Port will provide the Lummi Nation with a copy of the JARPA or any amendments submitted by the Port or the Port's tenant for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project*, which is Project 7 in Exhibit B to the Framework Agreement.
10. NOAA Pier Rehabilitation. At the time of submission, the Port will provide the Lummi Nation with a copy of the Port's JARPA and all associated documents for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, which is Project 15 in Exhibit B to the Framework Agreement.

11. Marina Advisory Committee. The Port will create a position on the Port's Marina Advisory Committee to be filled by appointment by the Port Commission with a Lummi Nation representative recommended by the Lummi Nation Natural Resources Commission and approved by the Lummi Indian Business Council.

B. Responsibilities and Obligations of the Lummi Nation in Agreement No. 1:

1. Continued Lummi Nation NOAA Support and Response to the Short-term Elements of the Bellingham Shipping Terminal Improvements Project. It is noted that the Lummi Nation has provided a letter of support for the Port effort to have NOAA relocate to Bellingham. The Lummi Nation will not oppose the relocation of NOAA's Pacific fleet to the Port's facility. In this regard, the Lummi Nation will respond within legal time frames to the Port's JARPA for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, which is Project 15 in Exhibit B to the Framework Agreement and inform permitting agencies that the Nation does not oppose the permits for the short-term elements only as described in paragraph 2(a) of the *Bellingham Shipping Terminal Improvements Project*, provided that NOAA has made a decision to relocate its Marine Operations Center-Pacific to Bellingham and as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.
2. Technical Support Services. Lummi Nation Natural Resources Department staff will provide expertise and technical support services during the term of this Agreement No. 1 to assist in accomplishing the Parties' goals and objectives described below in Section C.
3. Lummi Nation Response to Short-term Elements of the Blaine Harbor Facility Improvements Project. It is noted that as negotiations of this Agreement No. 1 progressed, the Lummi Nation did not oppose the JARPA for the short-term elements only as described in paragraph 2(a) of the *Blaine Harbor Facility Improvements Project*, which is Project 14 in Exhibit B to the Framework Agreement, in order to move the negotiations forward. The Port and the Lummi Nation agree that the non-opposition of the Lummi Nation has been provided by the Lummi Nation as part of this Agreement No. 1.
4. Lummi Nation Response to JARPAs for Short-term and Long-term Elements of Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project. The Lummi Nation will respond within legal time frames to the Port's JARPAs for the short-term and long-term elements of the *Whatcom Waterway Site Clean-Up and Clean Ocean Marina Project*, which is Project No. 3 in Exhibit B to the Framework Agreement, and inform permitting agencies that the Nation and the Port are negotiating an agreement concerning the project. The Nation will inform the permitting agencies that it is not opposed to the agencies proceeding with work on the permit application.

5. Lummi Nation Response to JARPA for All Elements of the Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging Project. The Lummi Nation will respond within legal time frames to the Port's JARPA for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging Project*, which is Project 10 in Exhibit B to the Framework Agreement, and inform permitting agencies that the Nation does not oppose the permit for all elements of the *Gate 3 Squalicum Marina Re-Alignment and Maintenance Dredging* as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.

6. Lummi Nation Response to JARPAs for Short-term Elements of the Fairhaven Drydock Project. The Lummi Nation will respond within legal time frames to the Port's JARPA and the Port tenant's JARPA for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project*, which is Project 7 in Exhibit B of the Framework Agreement, and inform permitting agencies that the Nation does not oppose the permits for the short-term elements only as described in paragraph 2(a) of the *Fairhaven Shipyard / New Dry-Dock Project* as long as the mitigation measures identified in Exhibit B and Exhibit C of the Framework Agreement are implemented.

7. DMMP Pilot Study. The Lummi Nation will support the creation of a Dredge Material Management Program (DMMP) pilot study.

C. Mutual Responsibilities and Obligations of the Parties for Subsequent Implementation Agreements:

1. Comprehensive Agreement. The Port and the Lummi Nation will each continue to meet and negotiate in good faith to reach mutual understandings for a second implementation agreement, which will seek to address the broad goals described in the Framework Agreement. The Parties contemplate that successful negotiation and execution of a second implementation agreement will include a comprehensive agreement for the permitting of all the Port's projects on Exhibit B to the Framework Agreement, including the Whatcom Waterway Site, and will include a comprehensive agreement to address the projects' impacts on the Lummi Nation's Treaty rights to fish, hunt, and gather.

APPROVED by the Lummi Indian Business Council Resolution # 2009 - 121 (August _____, 2009).

LUMMI NATION

Chairman

Date _____

ADOPTED by the Port of Bellingham in an open public meeting on the ____ day of August, 2009.

THE PORT OF BELLINGHAM

Scott L. Walker
Commission President

Date _____