COOPERATIVE AGREEMENT
AMONG
PUYALLUP TRIBE OF INDIANS, MUCKLESHOOT INDIAN TRIBE, WASHINGTON DEPARTMENT OF ECOLOGY, WASHINGTON DEPARTMENT OF NATURAL RESOURCES, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE AND BUREAU OF INDIAN AFFAIRS REGARDING "YOWKWALA PROPERTY" RESTORATION PROJECT

I. PARTIES

This Agreement is entered into among the Commencement Bay Natural Resource Trustees (Trustees) consisting of The Puyallup Tribe of Indians (Puyallup Tribe), The Muckleshoot Indian Tribe (Muckleshoot Tribe); the Washington Department of Ecology (Ecology) as lead State natural resource trustee, the Washington Department of Natural Resources (WDNR); the Washington Department of Fish and Wildlife (WDFW), the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce; and the U.S. Department of the Interior (DOI) including the U.S. Fish and Wildlife Service (USFWS) and the Bureau of Indian Affairs (BIA). The Agreement concerns the management and use of property purchased by the Puyallup Tribe with funds provided by the Trustees. Hereinafter, as the context indicates, separate references to the Puyallup Tribe shall be taken to refer to the Puyallup Tribe in its independent capacity apart from its role as one of the Trustees.

II. RECITALS

A. The parties, Trustees under applicable state, federal and tribal law, enter into this Agreement in furtherance of their general responsibilities to restore, replace and acquire the equivalent of natural resources of the Commencement Bay environment injured by releases of hazardous substances.

B. *The Trustees are also parties to a Memorandum of Agreement Regarding* Natural Resource Damage Assessment in the Commencement Bay, Washington Environment (MOA), including its First Supplement concerning Coordination in the Use of Natural Resource Damage Assessment and Restoration Planning Contributions and Application of Natural Resource Damage Recoveries (MOA Supplement). The MOA Supplement provides that the Trustees may enter into separate agreements or memoranda of understanding to define their respective roles and responsibilities regarding habitat restoration projects undertaken by or on behalf of the Trustees. The terms of this Agreement are intended to apply in addition to those of the MOA and the MOA Supplement, the terms of which are hereby incorporated by reference.

C. As a consequence of settlements of natural resource damage claims against several parties, the Trustees have obtained funds, *real property and commitments of in-kind* services to be used for natural resource restoration purposes. The Trustees recently

completed a Commencement Bay Natural Resource Damage Assessment Restoration Plan (Restoration Plan) to guide use of the recovered funds, property and services, and have begun implementing the Restoration Plan by identifying potential restoration projects and suitable project sites.

D. Among the proposed restoration project sites identified by the Trustees is a parcel along the northern shoreline of Commencement Bay, known informally as the Yowkwala Property. The property is located at 5800 Marine View Drive, west of the Tyee Marina, and consists of three tax parcels (Assessor numbers 0321211041, 8950200281, and 0321211042). Through Trustee Council resolution 98-10 (March 14, 2000) the Trustees have agreed that the Puyallup Tribe should acquire the Yowkwala Property using Natural Resource Damage funds provided by the Trustees.

E. The Tribe will place a restrictive covenant on the deed to the Yowkwala Property that will make the land available to a habitat restoration project on the Yowkwala Property in perpetuity, and apply to have the property taken into trust by the United States on behalf of the Puyallup Tribe. When the Yowkwala property is in trust, state and local property taxes will not apply to the property.

F. The purpose of this Agreement is to identify the rights and responsibilities of the parties regarding the Yowkwala Property and the restoration project to be developed on it.

III. AUTHORITY

This Agreement is entered into pursuant to the Natural Resource Trustee provisions of section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. §9607(f); Section 311 of the Clean Water Act (CWA), as amended, 33 U.S.C. §1321, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Subpart G, 40 C.F.R. §§300.600 - 300.615, as amended; and other applicable federal state and tribal law. The following officials or their designees act on behalf of the public as state, federal and tribal Trustees for natural resources under this Agreement:

> The Director of the Department of Ecology for the State of Washington, as lead state Trustee; the Commissioner of Public Lands, and the Director of the Washington Department of Fish and Wildlife; The Tribal Council, or its designee, for the Puyallup Tribe of Indians; The Tribal Council, or its designee, for the Muckleshoot Indian Tribe; The Secretary of the Interior; The Undersecretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce.

IV. TERMS AND CONDITIONS

A. Yowkwala Property Restoration Project

The Yowkwala Property Restoration Project (Restoration Project) consists of: (1) acquisition of the Yowkwala Property by the Puyallup Tribe using Natural Resource Damage funds provided by the Trustees, and (2) improvement by the Trustees of existing upland and inter-tidal habitat on the Yowkwala Property for bird and marine life. The overall purpose of the Restoration Project is to restore natural resources injured by releases of hazardous substances. This purpose will be accomplished by preserving and/or enhancing vegetated shallows, mudflats and upland areas, and by screening this habitat from adjacent developed uplands, thereby increasing the ecosystem complexity and habitat value of the northern shore of Commencement Bay to shore birds, fishes and other aquatic organisms.

B. Property Ownership, Use and Maintenance.

1. Yowkwala Property Ownership. The Puyallup Tribe shall take ownership of the Yowkwala Property; and shall initiate proceedings to have the property taken into trust by the United States on behalf of the Puyallup Tribe, subject to a restrictive covenant on the deed to the Yowkwala Property that will make the land available to a habitat restoration project on the Yowkwala Property in perpetuity. The restrictive covenant on the deed to the Yowkwala Property (Deed Restriction) is attached hereto as Exhibit A and incorporated herein. It is the purpose of this Deed Restriction to assure that the Yowkwala Property will provide habitat value in the Commencement Bay environment in perpetuity.

2. Yowkwala Property Use. Activities may be conducted on the Yowkwala Property that are consistent with the purpose provided in Section IV(A) above and the Deed Restriction. Use of, or activity on, the Yowkwala Property inconsistent with this purpose is prohibited and the Puyallup Tribe and the Trustees acknowledge and agree that they will not conduct, engage in, or permit such use or activity.

3. Yowkwala Property Access.

a. The Puyallup Tribe may enter and freely move about the Yowkwala Property for: (i) uses and activities that are consistent with the purpose provided in Section IV(A) above and the Deed Restriction, (ii) activities consistent with maintenance responsibilities described below, or (iii) undertaking emergency action(s) necessary to protect health, safety or the environment on the Yowkwala Property.

b. At all reasonable times and upon prior reasonable notice to the Puyallup Tribe, the Trustees (or other parties specifically designated by the Trustees) may enter and freely move about the Yowkwala Property for the purposes of implementing the Yowkwala Restoration Project or carrying

out the terms of this Agreement; inspecting conditions, activities and the results of activities; conducting tests and taking samples of soil, water, air and biota as the Trustees deem necessary; using a camera, sound recording device or other documentary type equipment; and placing monitoring devices.

c. Access by the general public to any part of the Yowkwala Property shall only be made with the prior consent of the Puyallup Tribe and the Trustees. Such consent, which may be given orally or in writing, may only be for purposes consistent with Section IV(A) of this Agreement and the Deed Restriction.

4. Yowkwala Property Maintenance. The Puyallup Tribe shall perform ordinary upkeep and maintenance of the Yowkwala Property. Maintenance other than ordinary upkeep and maintenance shall be dealt with under Section IV(C)(1)(a) of this Agreement.

5. Yowkwala Property Expenses.

a. The Trustees have provided the funds to the Puyallup Tribe for the acquisition of the Yowkwala Property. In addition, the Trustees shall pay the Puyallup Tribe a onetime lump sum payment of $20,000 to reimburse the Puyallup Tribe for costs associated with ownership and ordinary upkeep and maintenance responsibilities in perpetuity. The Puyallup Tribe shall assume responsibility for the payment of expenses incidental to the ownership and ordinary upkeep and maintenance of the Yowkwala Property including the maintenance of adequate comprehensive general liability insurance coverage.

b. The Yowkwala Property is outside the area of the Commencement Bay/Nearshore Tideflats Superfund Site. Level I and level II environmental assessments have been completed on the Yowkwala Property. They discovered small amounts of environmental contamination. Bioassay testing was requested by Washington Department of Ecology and it concluded that the contamination levels were below action levels and there was no need for environmental remediation. If further contamination is found on the property that requires cleanup or the existing low level contamination requires subsequent cleanup, then the Trustees will bear the cost of such cleanup from available Commencement Bay restoration funds.

C. Restoration Project Administration and Implementation

1. Restoration Project Development and Construction.

a.. The Trustees shall be responsible for designing, developing, implementing and constructing the Restoration Project for the Yowkwala Property. The Trustees shall also be responsible for any adaptive management activities for the Restoration Project. For purposes of this Agreement, "adaptive management activities" means additional actions that need to be taken on the Yowkwala Property to maintain the constructed habitat or change the habitat in some manner to meet the Restoration Project purpose provided in Section IV(A) above. Anticipated changes or developments that may require adaptive management include, among others, the failure of vegetation to establish or spread, substantial erosion or sedimentation that adversely alters habitat characteristics, or adverse impacts from offsite upland development or access to the property. Provided, however, that adaptive management to address adverse impacts that result mainly from access to the property by the Puyallup Tribe pursuant to section IV(B)(3)(a)(i) above shall be the responsibility of the Puyallup Tribe.

b. The Puyallup Tribe shall be responsible for applying for and receiving all necessary permits for the Restoration Project, unless agreed otherwise by the Tribe and Trustees. To the extent consistent with the Trustees' discharge of their duties under CERCLA and other applicable laws, the Trustees shall cooperate with the Puyallup Tribe on all permit applications related to the Restoration Project.

2. Restoration Project Expenses. The Trustees shall bear all of the costs incident to the design, development, implementation and construction of the Restoration Project, and for any adaptive management activities conducted on the Yowkwala Property, subject to the terms of section IV(C)(1)(a) above.

D. Dispute Resolution

The dispute resolution provisions of the First Supplement to the Memorandum of Agreement Regarding Natural Resource Damage Assessment in the Commencement Bay, Washington Environment (MOA Supplement concerning Coordination in the Use of Natural Resource Damage Assessment and Restoration Planning Contributions and Application of Natural Resource Damage Recoveries), are expressly made applicable to this Agreement.

E. Subsequent Transfers or Removal of the Deed Restriction and Termination of the Agreement.

The Puyallup Tribe agrees to incorporate the terms of the Deed Restriction in any deed or other legal instrument by which it holds title to the Yowkwala Property. If circumstances arise in the future that render the purpose of the Yowkwala Restoration Project impossible or impractical to accomplish, the Puyallup Tribe and the Trustees may agree to remove the Deed Restriction from the Yowkwala Property and terminate this Agreement under such terms and conditions as they agree to at that time.

F. Miscellaneous Provisions

All stipulations and limitations included in the 1990 Agreement (e.g., Paragraph III.B. of the 1990 Agreement regarding availability of funds, Paragraph III.J. 1 of the 1990 Agreement regarding compliance with 41 U.S.C. §22, Paragraph 111.3.2. of the 1990 Agreement regarding the absence of admission or approval of facts, etc.) shall remain in force and effect and shall apply equally to this Cooperative Agreement.

G. Execution, Effective Date

This Cooperative Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original and shall be retained by the Lead Natural Resource Trustee. The date of execution shall be the date of the final signature of the parties to this Cooperative Agreement.

H. Amendment and Termination

This Cooperative Agreement may not be amended except by written agreement of all parties to this agreement. This Cooperative Agreement shall continue in effect until it is terminated by agreement of all of the Parties; provided, however, that the withdrawal of any party from the 1990 Agreement in accordance with its terms shall constitute withdrawal as a Trustee from this Cooperative Agreement as well. If the Puyallup Tribe withdraws as a Trustee from the 1990 Agreement, it will nevertheless continue to be bound by commitments made in this agreement in its independent capacity.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date and year opposite their signature.

THE PUYALLUP TRIBE OF INDIANS BY:

Herman Dillon, Sr. — Date 10/11/00

Herman Dillon, Sr.
Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE BY:

Chair — Date

Muckleshoot Tribal Council

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION BY:

Craig R. O'Connor — Date 11/21/00

Craig R. O'Connor
Deputy General Counsel

WASHINGTON DEPARTMENT OF ECOLOGY BY:
Lead State Trustee

Michelle Wilcox — Date

IN WITNESS WHEREOF the Parties have executed this Agreement on the date and year opposite their signature.

THE PUYALLUP TRIBE OF INDIANS BY:

Herman Dillon, Sr. — Date

Herman Dillon, Sr.
Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE BY:

Chair — Date

Chair
Muckleshoot Tribal Council

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION BY:

Craig R. O'Connor — Date

Craig R. O'Connor
Deputy General Counsel

WASHINGTON DEPARTMENT OF ECOLOGY BY:
Lead State Trustee

Michelle Wilcox — Date

IN WITNESS WHEREOF the Parties have executed this Agreement on the date and year opposite their signature.

THE PUYALLUP TRIBE OF INDIANS BY:

Herman Dillon, Sr. — Date

Herman Dillon, Sr.
Chair
Puyallup Tribal Council

THE MUCKLESHOOT INDIAN TRIBE BY:

Chair — Date 12.15.00

Muckleshoot Tribal Council

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION BY:

Craig R. O'Connor — Date

Deputy General Counsel

WASHINGTON DEPARTMENT OF ECOLOGY BY:
Lead State Trustee

for Michelle Wilcox — Date 7/03/01

Michelle Wilcox

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____ December 20, 2006
Date

Jennifer M. Belcher
Commissioner of Public Lands

WASHINGTON DEPARTMENT OF FISHERIES AND WILDLIFE

BY: _____ _____
Date

Jeffrey P. Koenings
Director

Approved as to Form for the Washington Department of Ecology, Washington Department of Natural resources, and Washington Department of Fisheries and Wildlife:

BY: _____ _____
Date

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE BY:

BY: _____ _____
Date

Regional Environmental Officer

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____ _____
Date

Jennifer M. Belcher
Commissioner of Public Lands

WASHINGTON DEPARTMENT OF FISHERIES AND WILDLIFE

BY: _____ 1-10-2001
Date

Jeffrey P. Koenings
Director

Approved as to Form for the Washington Department of Ecology, Washington Department of Natural resources, and Washington Department of Fisheries and Wildlife:

BY: _____ _____
Date

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

BY: _____ 9/12/01
Date

Anne Badgley
Regional Director

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY: _____ _____
Date

Jennifer M. Belcher
Commissioner of Public Lands

WASHINGTON DEPARTMENT OF FISHERIES AND WILDLIFE

BY: _____ _____
Date

Jeffrey P. Koenings
Director

Approved as to Form for the Washington Department of Ecology, Washington Department of Natural resources, and Washington Department of Fisheries and Wildlife:

BY: _____ _____
Date

U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF ENVIRONMENTAL POLICY AND COMPLIANCE BY:

BY: _____ _____
Date

Regional Environmental Officer

Exhibit A

Restrictive Covenant

Notice is hereby given that the property legally described in exhibit A hereto (the Restoration Property) is subject to use restrictions and other obligations enforceable by the Natural Resource Trustees for Commencement flay (enumerated in the Cooperative Agreement described below). The purpose of these restrictions and obligations is to ensure that the Restoration Property provides habitat value in perpetuity in the Commencement Bay environment.

These restrictions and obligations are described in Section __ of the Cooperative Agreement for the Yowkwala Restoration Project (Cooperative Agreement). Copies of the Cooperative Agreement are available from the Puyallup Tribe of Indians,_____

Potential purchasers and lessees are further put on notice that, pursuant to the Cooperative Agreement, the Restoration Property may not be disturbed in any manner that would impair or interfere with the integrity of the habitat restoration, unless the Natural Resource Trustees for Commencement Bay, or their successors in interest, determine that such disturbance is necessary to (i) maintain habitat value in perpetuity or (ii) reduce a threat to human health or the environment.

The restrictions and obligations described above are intended to run with the land and are intended to be binding on any and all persons who acquire an interest in the Restoration Property. This restrictive covenant may be removed from the Restoration Property if circumstances arise in the future that render the purpose of the restrictions and obligations impossible or impractical to accomplish, but only in the manner provided for in the Cooperative Agreement.

DATED this_____day of_____

Restoration Property Owner

By:

Its:

STATE OF WASHINGTON)
)ss
COUNTYOF_____)

On this ____ day of_____ 2000 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____to me known to be the _____ of _____ the

[corporation] that executed the within and 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 _____ is authorized to execute the said instrument and that the seal affixed (if any) is the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Washington, residing
at_____
My commission
expires_____