

# **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  
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## 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.

Union Pacific and the City of Fife agree to fund up to \$2 million of the cost of construction of an underpass or overpass at Frank Albert Road. For purposes of this Agreement, the improvement value to the property will be \$800,000.

#### Torre Property (Fife)

The Tribe will receive 27.4 acres located on Frank Albert Road in Fife, or the cash value of that property. The Port will determine which option will be implemented.

#### Taylor Way/East-West Road Properties

The Tribe will receive two pieces of property totalling 7.4 acres, one on Taylor Way, the other on East-West Road. These properties will retain their current designation as a Foreign Trade Zone.

#### Forest, Recreation and Cultural Areas

The Tribe will receive \$500,000 for the purchase of open space, forest and cultural lands for uses to be determined by the Tribe and its members. It is estimated this amount would purchase approximately 600 acres.

#### General Requirements for Lands Conveyed to Tribe Under This Agreement

The parties agree that lands conveyed by this Agreement will be placed in trust with on-reservation status by federal legislation enacting this Agreement, subject to the uses specified in Document 1. However, nothing in that designation shall be construed as a precedent for or against the granting of on-reservation status to other lands interior or exterior to the 1873 Survey Area. Forest, recreation and cultural lands will be placed in trust and designated as off-reservation status.

Final transfers of property will be consistent with established land exchange procedures. Contamination audits will be completed by the Port on its properties for the purpose of establishing that each property complies with applicable federal or state contamination law, and is reasonably useful for commercial/industrial development by the Tribe. See Document 1 for details.

#### B. Current Riverbed

The non-Indian parties will convey any right, title or interest they have in the submerged lands in the Puyallup

River within the 1873 survey area below the mean high water line to the United States in trust for the Tribe.

1. The United States and the Tribe confirm all existing rights-of-way across the river bed and the right to maintain them. The Tribe agrees it will not impose any charge for or regulate the use and maintenance of such rights-of-way.

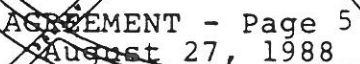
2. The Tribe shall not deny, condition or impose any charge for discharges of waste water, storm water, or sanitary waters which discharges comply with applicable federal water standards and do not interfere with the Tribe's treaty protected fishing rights.

3. Any other easements for public purposes or utilities shall not be unreasonably withheld, but reasonable charges can be imposed by the Tribe for such easements valued in the same manner as the valuation of property in eminent domain proceedings. However, the Tribe, because of funds advanced by the State in this Agreement agrees that it will not charge the State for an additional transportation easement, including necessary support structures, to cross the river so long as the structure is substantially completed within 15 years of the effective date of this Agreement.

4. Within 3 years of the effective date of this Agreement, the Tribe, State, Federal Government, and the County will agree to a plan for flood control. That plan is to address the location, amount and timing of necessary gravel removal, vegetation control, and the roles and responsibilities of the Tribe, State, County and Federal Government in the plan development and implementation.

5. The Tribal Trust ownership of the river bed shall not enlarge or diminish the fishing rights of any person or party.

ADDITIONAL PROPERTIES  
(NOT SHOWN)  
TOHNE PROPERTY - FIVE  
UNION PACIFIC PROPERTY - FIVE  
FOREST RECREATION & CULTURAL AREAS  
(TO BE PURCHASED BY TRIME)





**LANDS TO PUYALLUP TRIBE - FIVE AREA**

The map illustrates the geographical context of the five-acre area. The Puyallup River flows along the left side. To the right of the river is the Mainline RR. Further east is Interstate 5. The Tongue Property is located south of the river. The UP Property and UP - OPTION are situated between the river and the Tongue Property. The five-acre area is located south of the UP Property and UP - OPTION, near the intersection of Albert Rd and East 54th Street. The map also shows the location of the Puyallup Tribe's five-acre area, which is the subject of the document.

## 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 \$1,300,000 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. Sitcum 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

These mitigation and enhancement projects will be constructed in coordination with the development projects listed below.

In addition to the above mitigation and enhancement measures to be carried out by the Port, the Port will provide a \$1,300,000 cash payment, both as part of the Fisheries Enhancement program outlined in Section IV.A. above.

The Port will work with Tribal biologists in developing the Port's 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.

## 2. Tribe's Approval of Specified Port of Tacoma Projects

The Port of Tacoma has proposed certain construction projects listed below, with the provisions for specified mitigation and enhancement stated above. The Tribe agrees to give approval to the following projects, on the condition that the Port constructs them in the manner described in Document 4. If the conditions are met, the Tribe agrees not to oppose the projects in any federal, state, or local permitting processes. Projects are fully defined in Document 4, Fisheries, and Document 6, Blair Project.

- a. Milwaukee Waterway Fill. Filling of 72.5 percent of the Milwaukee Waterway using Blair Waterway dredged material.

The Port will not begin the dredging or construction of this project and will stop all further processing of permits for this project prior to reaching the comment stage for the FEIS, and delay the restart of that process until the effective date of this Agreement. The Tribe shall not oppose the application during this delay period, but reserves all rights to oppose the project if the Agreement does not become effective.

As part of this stoppage of further processing, the Port will request the Corps of Engineers to delay its formal review and publication of the Draft Supplemental FEIS currently being prepared. The Tribe will notify the Corps that their letters of March 1 and May 17, 1988 relating to that draft document are to be held in abeyance pending the

Tribe's reevaluation of the project and the effective date of this Agreement.

b. Expansion of Terminal 3. Filling of Slip 1 and extension of Terminal 3 pier by up to 1,000 feet.

c. Northeast Blair Pier. Construction of a pier at the Blair Waterway turning basin of a length not to exceed 1,000 feet.

d. Blair Navigation Project. Widening and deepening of the Blair Waterway navigational channel to include dredging and placement of the dredge material into the Milwaukee Fill project and replacement or bypass of the East 11th Street (Blair) bridge across the Waterway. Also included in this project is long-term maintenance dredging of both the Blair and Sitcum Waterways.

The bypass road portion of the Blair Navigation Project includes an elevated bridge crossing over a portion of Tribal land located along the east bank of the Puyallup River, downstream from the existing Highway 99 Bridge. As part of the Tribe's approval of this project which is to be completed by the Washington State Department of Transportation, it is agreed that land will be provided by the Tribe for bridge construction. Details of agreed compensation and continued access by Tribal fishermen is in Document 6.

The Port agrees to schedule construction of the listed projects and their mitigation and enhancement measures in a manner which minimizes fisheries impacts, in accordance with agency requirements. Mitigation and enhancement measures shall be completed concurrently with the project.

### 3. General Purpose Local Government Actions

#### a. Definition

For purposes of this Section IV, the phrase "general purpose local government" (hereinafter "local government") refers to cities and the county who are parties to this Agreement.

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

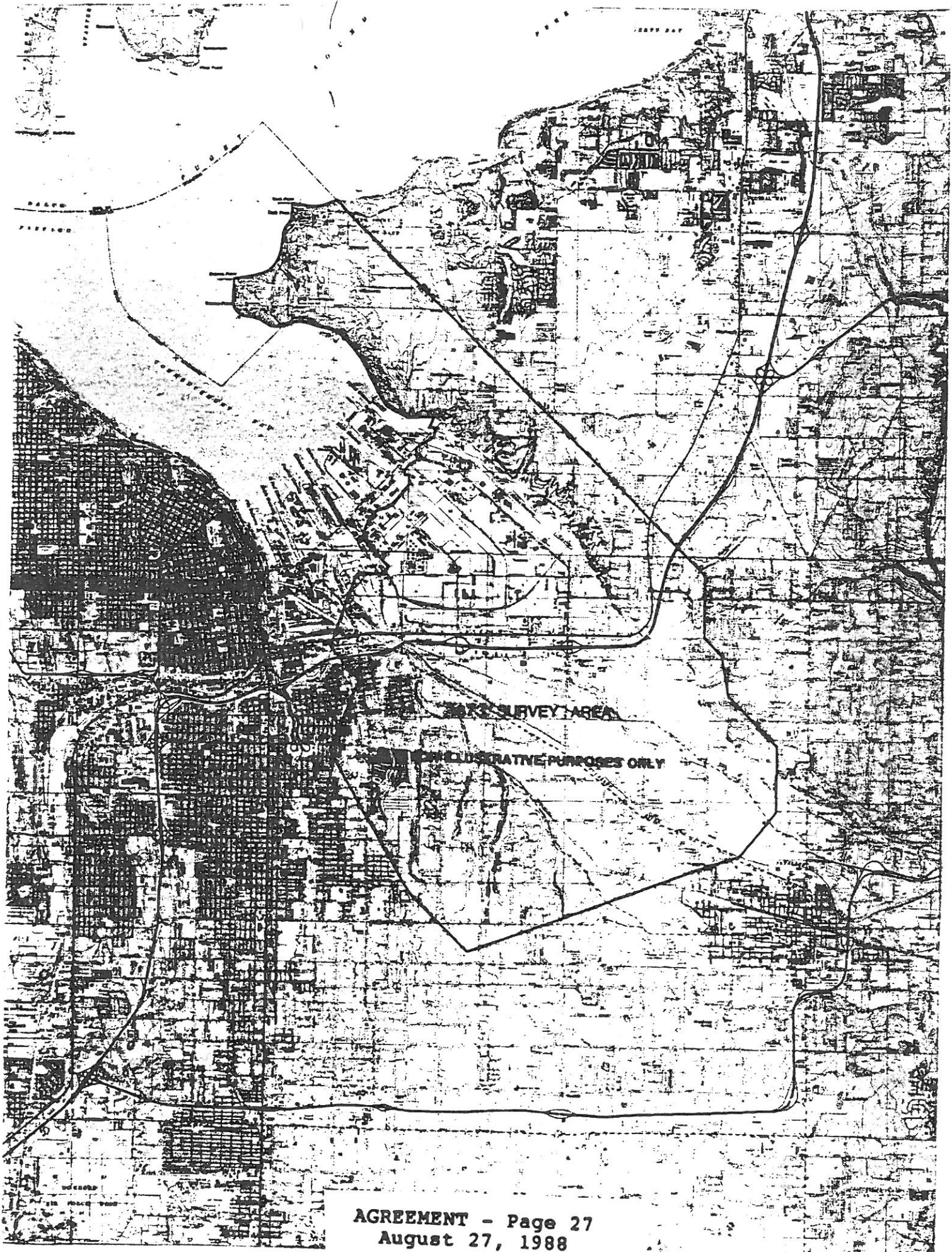
In order to exercise the highest degree of cooperation, the Puyallup Indian Tribe and the state and its political subdivisions, through their respective law enforcement authorities, agree to the following program, as described in Document 7:

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, 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 408 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.

LIMITED MODIFICATION OF SETTLEMENT AGREEMENT

among the

PUYALLUP INDIAN TRIBE,  
and the  
STATE OF WASHINGTON,  
Department of Social and Health Services

concerning

SECTION V of the SETTLEMENT AGREEMENT and  
TECHNICAL DOCUMENT #5 to the SETTLEMENT AGREEMENT  
Use of Funds Earmarked For Social Service Facilities and  
For Social Service Training

DRAFT

The Puyallup Indian Tribe ("Tribe") and the State of Washington, through its Department of Social and Health Services ("DSHS"), enter into this Limited Modification of the Settlement Agreement of August 27, 1988, which was adopted by the Tribe, the State, and other parties. This Limited Modification is adopted pursuant to section III of the Modification Procedure ratified by the Settlement parties, dated August 9, 1991.

The purpose of this Limited Modification is to clarify appropriate uses of certain funds that were provided as part of the Settlement Agreement. In the approximately five years since the Settlement took effect, the Tribe has planned and begun acquisition and construction of certain facilities for which the Settlement provided funding.

As planning has progressed, the Tribe has modified its strategies and priorities for dealing with issues addressed in the Settlement. The clarifications adopted in this Limited Modification are designed to allow the use of Settlement funds for development of the facilities and programs intended by the Settlement, but in a manner more realistic and more consistent with the Tribe's overall programs and resources.

With that goal in mind, the Tribe and DSHS agree as follows:

1. Training Funds. Under sections V(C)(2) of the Settlement Agreement and sections C(2)(b) and (c) of Technical Document #5, the State agreed to provide, and has provided, to the Tribe the sums of \$20,000 and \$65,000 respectively, to pay for day care training and child welfare training. It is hereby agreed that those funds may be used toward the cost of construction of a child day care center, to supplement the funds provided by the State for that purpose under section V(C)(1) of the Settlement Agreement and section C(1) (incorrectly labeled C(A)) of Technical Document #5.

2. Elder Care Facility. Under section V(C)(1) of the

## PUYALLUP RESERVATION CENSUS TRACTS

### PUYALLUP RESERVATION CENSUS TRACTS

709

601.01

601.02

602

707.02

705.00

734.03

712.02

709.00

710.00

621.00

622.00

# Puyallup Reservation Area

## Census Tracts

