



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Puget Sound Agency
2707 Colby Ave. - Suite 1101
Everett, Washington 98201-3665
(425) 258-2651



April 19, 2012

**CERTIFIED MAIL No. 7011 2000 0002 3653 3326 - RETURN RECEIPT
REQUESTED**

RECEIVED

APR 20 2012

**JACK LOUWS
COUNTY EXECUTIVE**

Honorable Clifford Cultee
Chairman
Lummi Tribe
2616 Kwina Road
Bellingham, Washington 98226-9298

Attention: Diana Bob, Staff Attorney

Dear Chairman Cultee:

Enclosed for your information and use is one (1) copy of the Bureau of Indian Affairs approved Tidelands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point between the Lummi Tribe, Lessor, and Whatcom County, lessee(s) residing upon the Lummi Indian Reservation. A courtesy copy of this recorded document is also being mailed to Whatcom County as addressed in provision 17.

Payment invoices are being provided to Whatcom County for certification that direct payment has been made and payments are current.

If you have any questions, contact Leora Circle, Realty Specialist at (425) 258-2651, ext. 246.

Sincerely,

Judith R. Joseph
Superintendent

cc: Whatcom County Executive

ORIGINAL

Recorded at the
U.S. Department of the Interior
Bureau of Indian Affairs
Land Titles and Records Office
Document Number: 5091761146
Date: 2012 MAR 28 09:36 AM
LTC/RS/TH/d

Tidelands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point

This lease agreement is made on this 27th day of October, 2011 and entered into between the Lummi Nation, acting by and through its governing body, the Lummi Indian Business Council, (hereafter identified as "Lessor"); with approval by the United States Secretary of the Department of the Interior or his duly authorized representative within the Bureau of Indian Affairs; and Whatcom County, a municipal corporation and political subdivision of the State of Washington, (hereafter identified as "Lessee"), acting through its chief executive officer, the Whatcom County Executive, with approval of the County Council.

History: On February 14, 1963, the parties first executed a lease for the County's use of the tidelands held in trust by the United States for Lummi Nation and its members. The lease was also approved by the Secretary of the Department of the Interior through his designee at the Bureau of Indian Affairs as required by federal law for lands held in trust, and by its terms was a lease for 25 years. On May 12, 1988, the Lummi Nation and Whatcom County executed a new lease for a term of twenty-five years with a renewal option, with a beginning date of February 14, 1985, the provisions of which were directed by the 1982 consent decree for a civil rights lawsuit (*Lummi Indian Tribe v. Hallauer, et al.*: Civ. No. C79-682R [W.D. Wash.]), for certain uplands and tidelands located on the Lummi Indian Reservation, the tidelands portion of which are held by the United States in trust for the Lummi Nation and its members. The purpose of the lease was to allow the County to use Lummi tidelands and Lummi Nation-owned uplands to continue operating the Lummi Island Ferry from Gooseberry Point.

The lease addressed use of tidelands held in trust by the United States for the Lummi Nation and its members, requiring approval by the Secretary of the Department of the Interior in order to have a valid lease. The Secretary never approved the tidelands portion of the lease. In spite of the absence of Secretarial approval, the parties carried out their promises and obligations under the 1988 lease for the initial 25 year term. The initial term provided in the agreement and consent decree was not approved by the Department of the Interior and expired on February 14, 2010. The Lummi Nation declined to further renew or extend under the terms of the 1988 lease that had not been approved by the Department of the Interior, and of the consent decree which itself stated that the terms were subject to approval by the "United States Bureau of Indian Affairs". Thereafter the parties negotiated new lease terms for both pertinent tidelands and uplands, the negotiated tidelands lease terms being contained herein.

Definitions:

"Agreement" as referred to herein means the content of this document, its attachments, and all amendments thereto, including any further implementation agreements.

"Framework Agreement" means the agreement signed by the parties that is designated as such and that contains various principles for constructing and interpreting the several agreements pertaining to the lease of the ferry landing area.

"Tidelands Lease" means the agreement signed by the Parties and the Secretary of the Department of the Interior or his authorized representative, governing the use of the tidelands at Gooseberry Point that are held in trust by the United States government.

"Uplands Lease" means the agreement signed by the Parties governing the use of lands owned by Lummi Nation within the staging area for the County ferry operation lying between the County road known as Haxton Way or Lummi View Drive and the tidelands south of that upland area.

"Parties" as used herein refers to the Lummi Nation, also designated herein as "Lessor", and Whatcom County, also designated herein as "Lessee" and "County".

"Secretary" means the Secretary of the Department of the Interior of the United States, or his or her authorized representative.

Lease Terms: This agreement is entered into pursuant to the provisions of existing law, pertains to land that is subject to restrictions on alienation by the Lummi Nation and thus is subject to regulation under the provisions of 25 CFR Section 162, as presently existing or hereafter amended.

In consideration for rents and covenants, and agreements hereinafter provided for, Lessor grants this lease to Lessee for the land and premises described as follows:

Lummi tribal tidelands fronting Lot 2, Section 3, Township 37 North, Range 1 East, Willamette Meridian, Whatcom County, Washington, as more fully described on the attached Exhibit A.

This agreement addresses only the tidelands portion of the agreement between the parties, and the terms in this agreement apply only to the tidelands portion of the agreement. The terms of this agreement are to be supported by the Intergovernmental Framework Agreement which was executed on October 27, 2011 by the Lummi Nation and Whatcom County, the terms of which are incorporated by reference as if fully set forth herein, with the approvals given here fully extending to the substantive provisions thereof, as if they were contained and set forth herein, and an Uplands Lease Agreement executed on October 27, 2011.

1. Use of premises. It is agreed by Lessor and Lessee that the property herein described shall be used solely for the purpose of operating a public ferry landing

dock or slip for ferry service to Lummi Island. In using the leased premises it is expressly agreed that Lessee must:

- a. Comply with all applicable federal, state, and local laws, ordinances and regulations, including environmental requirements that are in force or which may hereafter be in force;
- b. Secure and keep up to date all necessary permits and licenses; and
- c. If and when Lummi Nation develops a marina at Gooseberry Point, the County shall modify the configuration of its dock, if and as necessary and consistent with technical feasibility. These actions of the County may include alteration of the waterward end of its dock as presently located for loading and unloading so as to accommodate a different angle of approach by the ferry.¹ The parties shall fully cooperate with each other in the construction phase(s) and in all permit processes that may be necessitated by application for and construction of dock renovation, reconfiguration and marina, with the goal of reducing environmental impact, reducing the need for environmental mitigation, and reducing costs to the parties. The costs associated with dock renovation, reconfiguration, redesign and any other type of modification of the dock shall be the full responsibility of the Lessee.

In the event the Lessee shall discontinue use of the leased premises for the purposes enumerated herein, with the exception of brief discontinuances due to weather or suspension of service due to operational issues promptly addressed (such as repairs, maintenance or construction), this lease shall terminate and the lease premises shall revert to Lessor, pursuant to the provisions of Section 10. Violations of Lease, below.

2. Term. The term encompassed by this lease shall be a total period of thirty-five years, with the commencement date being the date this document is fully executed between Lessor and Lessee, and signed by the Secretary of the Department of the Interior or his or her designee for purposes of lease approval. As provided in 25 U.S.C. §415 the first part of the term is twenty-five (25) years and will be immediately followed by a ten (10) year extension period. The approval and authorization for the entire thirty-five years is granted herein by both the Lummi Nation and the Secretary of the Department of the Interior through his designee within the Bureau of Indian Affairs. No further approvals shall be necessary in order for Lessee to derive the full benefit of this agreement and enforce this agreement under these terms during the period of renewal for ten years beyond the initial twenty-five year term. The term of this lease shall terminate on that same day of document execution during the year 2046. The period of this lease shall be identified as the "lease term."

¹ The parties are in agreement that the County's dock need not be moved from the space that it presently occupies but that if necessary to accommodate construction of a marina in the area of the current ferry approach to the dock, the waterward end of the dock where unloading and loading occurs would be re-oriented to accept a different angle of approach by ferry traffic so as to minimize interference with the siting of a marina.

3. Consideration for lease. Consideration for this lease reflects both the lease cost for the tidelands and mitigation, including traffic mitigation, for the community impacts of the ferry operations including impacts of the ferry operation at the usual and accustomed fishing places that support the Lummi Nation's tribal treaty rights to fish. This consideration is further recognized by the Lummi Nation and the U.S. government to be a fair annual rental amount, and shall consist of the following component:

Lessee covenants and agrees to pay \$200,000 per year, in U.S. Funds, or \$16,666.67 per month, adjusted throughout the lease term as outlined below, for monthly rent in advance on or before the 1st day of each and every month during the lease term. The payment amount stated here is a total amount which includes any applicable leasehold tax that may be imposed by the Lummi Nation in the future so that the amount owing, including any tax, shall not exceed the \$200,000 per year with appropriate adjustments for CPI. Payments will be submitted at Lessor's address set forth below. These lease payments are considered "direct payments" for the purposes of the Bureau of Indian Affairs accounting system called, Trust Assets Accounting Management System (TAAMS). Whatcom County will remit a TAAMS certification provided by the BIA and that will serve as proof of payment.

4. Rent Adjustment. During the lease term, the consideration for the lease will adjust annually, effective January 1 of each year, beginning on January 1, 2011, using the following formulas based on the Consumer Price Index, using the CPI-U National Index with the index base period being 1982-1984 = 100.²

Step One: To be completed every year. Establish the CPI-U Annual Growth (CPI-U AG). The reference points for measuring the change in the CPI-U will be the following intervals:

- December 2009 - December 2010 for lease year 2012;³
- December 2010 – December 2011 for lease year 2013;
- etc. to December 2043 – December 2044 for lease year 2046

CPI-U AG formula: December points (later year) – December points (earlier year) = Index Point Change. Divide Index Point Change by earlier year index amount. Here is the formula:

² The parties executed an interim agreement in early February 2010 under which they agreed to the County's continued use of the Gooseberry Point landing with annual consideration of \$200,000, effective February 15, 2010. The first CPI adjustment, effective January 1, 2011, is based upon the CPI-U index change from December 2008 to December 2009, a change of 2.7%. The reconciliation for 2011 necessitated by the 2011 CPI adjustment will occur with the last payment for the year, to be made by December 15, 2011. Thereafter, the due date for lease payments will be the first of each month as specified in Section 3, above.

³ The purpose of using the CPI change for the period two years before the current year is to allow the CPI change to be calculated and applied in the planning and budgeting process for the current year, which occurs during the year preceding the current year.

$$\text{CPI-U AG} = \left(\frac{(\text{CPI-U later year}) - (\text{CPI-U earlier year})}{(\text{CPI-U earlier year})} \right)$$

Step Two: To be completed annually. The annual payment will be calculated by taking the prior year's annual payment and adjusting that at the rate of the CPI-U AG for the pertinent preceding period (the period two years before the current year). Here is the formula:

$$\text{Annual Payment} = (1 + \text{CPI-U AG})^4 \times (\text{Prior year's payment})$$

5. Lummi Passage Upon the Ferry. During the term of the lease, Lessee shall grant free foot and non-commercial passenger vehicle passage upon and across the ferry operated by Lessee between Gooseberry Point and Lummi Island to those persons going to Lummi Island for legitimate tribal business who are either enrolled members of the Lummi Nation or employees thereof, and who also present appropriate identification issued by the Nation, including Lummi Indian Business Council Identification cards or current fishing cards/licenses as issued by the Lummi Nation.

6. Improvements. Any buildings, docks, or other structures or improvements placed upon the leased premises by Lessee shall become the property of Lessor upon the expiration or termination of this lease, subject however, to Lessee's right to take possession of, and remove any such improvement at its sole expense within 90 days after the expiration or termination of this lease. If Lessee elects to remove the improvements, it shall return the leased premises to Lessor in good condition and restore the surface of the ground, including areas underwater, to a pre-project condition.

7. Unlawful Conduct. Lessee agrees that it will not use or cause or allow to be used any part of the leased property for any unlawful conduct or purpose.

8. Subleases and Assignments. No sublease, assignment, or amendment of this lease may be made without written consent of the Parties and written approval of the Secretary or his or her authorized representative. This agreement is based on a government-to-government relationship between the Lummi Nation and Whatcom County for the provision of public access to Lummi Island. Any entity operating a ferry under contract for such service with the County shall not be precluded from doing so by this clause and no sublease, assignment, or amendment of this lease shall be necessary for that circumstance, provided that such party shall act consistently with the terms and conditions set forth herein.

⁴ For purposes of this formula, the CPI-U AG should be converted from a percentage by moving the decimal point two digits to the left before being added to 1, e.g., a 2.7% increase in CPI-U would yield a multiplier of 1.027.

9. Interest of Members of Congress. No Member of, or Delegate to Congress shall be admitted to share any or part of this contract or any benefit that may arise herefrom.

10. Violations of Lease. Any violations of this lease may be acted upon in accordance with the Intergovernmental Framework Agreement and applicable provisions of law, including but not limited to the provisions of 25 CFR §162, as presently existing or hereafter modified, subject to and consistent with the provisions for dispute resolution contained in Section 13, below. Default and abandonment shall be violations of this lease.

- a. Notice of Violation, Default and Abandonment. Upon any occurrence of a violation, default or abandonment under this lease, Lessor shall provide written notice directed to Lessee and give Lessee 30 days to cure or correct the violation or default or to prove it has not abandoned the premises. At the end of the 30-day period, if the violation or default has not been corrected or Lessee has not proved that it has not abandoned the premises, Lessor shall be permitted to give written notice of termination of the lease to Lessee.
- b. Notice of Termination. If one or more violations or defaults described above are not cured to the satisfaction of Lessor within 30 days, Lessor reserves the right to terminate this agreement by giving written notice to Lessee as provided in Section 17 below. In the event of a termination under this provision, Lessee shall have 90 days from the date of termination, as specified in written notice to Lessee, to remove improvements in conformance with Section 6 of this Agreement.
- c. Waiver or acceptance. A waiver or acceptance by Lessor of any violation, default or abandonment under the terms of this agreement shall not operate as a release of Lessee's responsibility for any prior to subsequent violation or default. No assent, express or implied, to any breach of Lessee's duties or covenants shall be deemed a waiver or any other breach, either former or subsequent, of Lessee's duties and covenants.
- d. If the Lessee shall cease using the leased premises, it shall give prompt written notice of the same to Lessor. Lessor's remedy in that instance and for any violation leading to termination of the lease shall be its retaking possession of the premises that had been under lease to Lessee, in addition to collection of such rent established herein that remains owing for the period of use prior to vacation by Lessee, if there is any such delinquent rent. If Lessee exercises the option of termination, it shall leave the premises in reasonable order and good condition.

11. Hold Harmless/Indemnification. Lessee, its successors and assigns, will indemnify, protect, save, and hold harmless Lessor, its authorized agents, and

employees, and the U.S. government and its officers, agents, and employees from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, arising out of or in connection with any acts or activities on the lease premises and authorized by this lease. Lessee further agrees to defend Lessor, its agents or employees, and the U.S. government and its officers, agents, and employees, in any litigation arising by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, including payment of any costs or attorneys' fees.

This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Lessor or its authorized agents or employees or that of the U.S. government or its officers, agents, or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) Lessor, its agents or employees, and/or that of the U.S. government and its officers, agents, and employees, and (b) Lessee, its agents or employees, and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Lessee or Lessee's agents or employees.

12. Binding Contract. This lease agreement shall not become binding upon Lessee unless and until accepted and approved by Lessee and by the County Executive or his duly authorized representative. This lease agreement shall not become binding upon Lessor unless and until accepted and approved for Lessor by the Chairperson of the Lummi Nation or his duly appointed representative with approval from the Lummi Indian Business Council. Further, this lease agreement is not binding on either party unless and until approved by the Secretary of the Department of the Interior, or his duly appointed representative. The covenants and agreements herein shall extend to and be binding upon the heirs, successors, and assigns of the parties to this lease. All of Lessee's obligations under this lease are to the United States as well as to Lessor.

13. Dispute Resolution. All disputes between the Parties relating to or arising from this Tidelands Lease or any future agreement implementing any of the foregoing, shall be conducted as set forth herein:

- A. Any disagreement or dispute that arises between the Parties as to the interpretation, violation, or performance of any of the agreements to which this provision applies, or any rights or obligation arising thereunder, shall be resolved whenever possible by the Parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations. The Party initiating the resolution process shall serve on the other Party a written notice describing the dispute and invoking the dispute resolution process. The first meeting of the Parties shall occur not later than ten (10) days after receipt of

written notice describing the dispute, unless both Parties agree in writing to an extension of time.

- B. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) days after the first meeting as set out in this Section, then either Party may seek a resolution by arbitration in accordance with the procedures set forth herein. The Parties are required to participate in arbitration. Any claim, controversy or dispute subject to dispute resolution under this provision shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. To the maximum extent applicable, the Federal Arbitration Act (Title IX of the United States Code) will govern such arbitration. No rule or provision which may be construed to broaden the Nation's limited waiver of sovereign immunity beyond that contained in this Agreement shall apply. Such arbitration shall be held in Bellingham or such other place as the Parties agree. The arbitrator shall be empowered to impose sanctions and take such other actions as he or she deems necessary to the same extent a judge could impose sanctions or take such other actions pursuant to the Federal Rules of Civil Procedure and applicable law. The mutual commitment by the Parties to resolve disputes through arbitration shall not prevent either Party from seeking injunctive relief to compel arbitration and/or maintain the status quo pending resolution of the arbitration proceeding, through application to the federal District Court for the Western District of Washington; provided, however, that in the event such federal court declines jurisdiction over such claim for injunctive relief, such relief may be sought in the courts of the State of Washington, provided, however, such relief is consistent with this Agreement and the Nation's limited waiver of sovereign immunity.
- C. The arbitration shall be heard by a single arbitrator determined by the Parties. If the Parties cannot agree on an arbitrator, then the American Arbitration Association shall appoint one. The arbitrator should be a retired federal judge, if available. If such a person is not available, the arbitrator must be a licensed attorney or retired judge with some knowledge of federal Indian law and real property transactions involving Indian trust lands. The arbitrator must be unbiased and neutral.
- D. The arbitration hearing shall be conducted within ninety (90) days after an arbitrator is appointed unless the parties agree in writing to an extension of this period. The arbitration provisions hereof shall be self-executing, and the decision of the arbitrator shall be final and binding upon the Parties, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation

and enforcement of the arbitration judgment, except as provided in 9 U.S.C. §10. The arbitration judgment shall be in writing and give reasons for the decision. Each side shall bear its own costs, attorney's fees, and one half of the costs and expenses of the arbitrator. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Western District of Washington. In the event that the District Court determines that it lacks jurisdiction, the award may be confirmed by and entered in the courts of the State of Washington; provided, however, such award is consistent with this Agreement and the Nation's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration.

- E. No causes of action or claims in law or equity are cognizable against the County except actions against the County itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. Lummi Nation's remedy against the County in case of an uncured breach of the agreement(s) by the County shall be termination of the lease agreement(s) and vacation of the leased premises by the County. The Nation shall not bring any action arising from this Agreement, or any implementation agreement, against the County's council members, employees, agents or attorneys, except in official capacity for the sole purpose of effectuating on behalf of the County any and all court orders that may be issued pertaining to this agreement.

- F. The Nation hereby grants a limited waiver of its sovereign immunity from suit solely for actions brought by the County or its approved successor in interest (and no other person or entity) to enforce the terms of this Agreement, including an action to compel arbitration, specific performance and/or injunctive relief if warranted, consistent with the procedures for dispute resolution provided herein. This limited waiver is to be strictly and narrowly construed in favor of the Nation and may be enforced only under the conditions set forth herein. No causes of action or claims in law or equity are cognizable against the Nation except actions against the Nation itself for specific performance or injunctive relief arising out of this Agreement, including the Framework Agreement, the Uplands Lease, or any agreement implementing these agreements. In the event the County or its successors obtain a judgment or arbitration award as provided in this section and seeks to enforce such award, the Nation hereby agrees, if the federal district court declines to exercise jurisdiction, to submit to the jurisdiction of the state courts of Washington for the sole purpose of execution of the arbitration award of judgment. The Nation does not waive its sovereign immunity with respect to actions by third parties or

disputes between the Nation and the County that do not arise out of this Agreement, the Framework Agreement, the Uplands Lease, any agreement implementing those agreements, or any amendments thereto. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of the Nation, except in official capacity for the sole purpose of effectuating on behalf of Lessor any and all court orders that may be issued pertaining to this Agreement. The Nation's limited waiver of sovereign immunity shall be further evidenced by a resolution from the Lummi Nation Indian Business Council, which shall also waive any requirement for exhaustion of tribal remedies and jurisdiction in the Lummi Nation Tribal Court, to which resolution and waiver the Nation commits itself herein. In the event of a lawsuit involving this Agreement, venue shall be proper only in the U.S. Federal District Court for the Western District of Washington, except as provided in Section D, above. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States in this matter.

- G. The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims arising from or related to this Agreement or an implementation agreement shall be and remain confidential to the extent permitted by applicable law, except as otherwise mutually agreed by the Parties. The Parties recognize that the County is subject to Washington State's Open Meetings Act and Public Records Act, and both settlement agreements and arbitration outcomes are subject to public disclosure from the County to those making such requests.
- H. The Parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement or any implementation agreement, the Parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Parties shall continue their performance of the provisions of this Agreement.

14. Approval. This lease shall be valid and binding only after approval by the Secretary of the Department of the Interior or his duly authorized representative. Lessor covenants and agrees to present this lease promptly after execution by Lessor and Lessee to the Secretary or his duly authorized representative for approval, and to actively support and seek such approval. Failure to do so shall be deemed a breach of Lessor's duty herein, the foregoing requirement for Secretarial approval notwithstanding, and Lessee may seek enforcement of the

duty to present, support, and seek such approval with a remedy of specific performance by Lessor. The waiver of sovereign immunity by Lessor included in the Framework Agreement and incorporated in this agreement is intended to extend to this circumstance.

15. Modifications. This instrument contains all the agreements and conditions made between the parties with respect to the tidelands at the Gooseberry Point Ferry Terminal and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

16. Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, except where matters exclusively of federal law are concerned (such as the provisions regarding lease of restricted Indian lands), notwithstanding any choice of law provisions. This Agreement shall not be construed for or against any party based on drafting or preparation. Each Party has been represented by legal counsel of its choosing throughout the negotiation of this Agreement and the uplands and tidelands leases. Captions in this Agreement are included for convenience only and in no way define or limit the meaning or intent of any provision herein.

17. Notices. All notices required to be given under this lease shall be made in writing and shall be delivered or sent by certified mail addressed to the parties or their successors at the address listed below, unless a different address has been designated in writing and delivered to the other party.

For the Lummi Nation:

For Whatcom County:

Lummi Nation Chairman
2616 Kwina Road
Bellingham, WA 98226
Telephone: 360-384-2140

Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Telephone: 360-676-6717

18. Signatures.

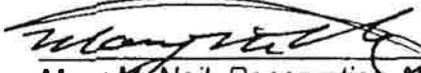
APPROVED by the Lummi Indian Business Council Resolution # 2011 – 116,
July 26, 2011.

LUMMI NATION

Clifford Cultee
Clifford Cultee, Chairman

Date October 27, 2011

Approved as to form


Mary M. Neil, Reservation Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 27th day of October 2011, before me personally appeared Clifford Coltee to me known to be Chair of the Lummi Indian Business Council, the federally-recognized Indian tribe that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Indian tribe, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Lummi Indian Business Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



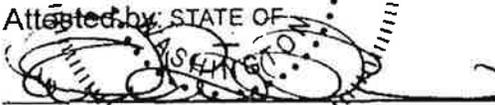
SUBSCRIBED AND SWORN to before me this 27 day of October, 2011.


Notary Public
My Commission Expires: 11/4/2013

ADOPTED by Whatcom County Council in an open public meeting on the 13th day of September, 2011.


Sara Crawford, Council Chair

Date 10/28/11

Attested by: STATE OF

Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE


Pete Kremen, County Executive

Date 11-15-11

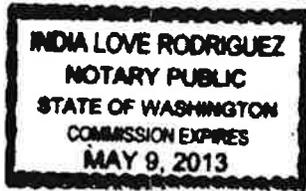
Approved as to form

Daniel L. Gibson 10/28/11
Daniel L. Gibson, Asst. Chief Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 15th day of November 2011, before me personally appeared Pete Kremen to me known to be Executive of Whatcom County, the public body that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said public body, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Whatcom County Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SUBSCRIBED AND SWORN to before me this 15 day of November, 2011.
India Love Rodriguez
Notary Public
My Commission Expires: 5.9.2013

APPROVAL BY THE UNITED STATES. This lease, together with all provisions incorporated by reference therein, is approved by the United States Department of the Interior, Office of the Secretary of the Interior, pursuant to 209 DM 8, 230 DM 1, 3 IAM 4, 4A, and 25 CFR Part 162.

The undersigned attests to and warrants his/her authority to sign this agreement as the duly authorized designee of the Secretary of the Interior.

Date: 11/15/11

By: Justin K. Joseph
Regional Superintendent,
Bureau of Indian Affairs, for the
Secretary of the Interior, acting
delegated authority.

**EXHIBIT A
LEGAL DESCRIPTION OF TIDELANDS SUBJECT TO LEASE**

All of that portion of second class Lummi Nation Tidelands lying in front of Government Lot 2, Section 3, Township 37 north, Range 1 East of W.M., Whatcom County, Washington, abutting the following described parcel;

All that portion of Govt. Lot 4 in Section 34, Township 38 North, Range 1 East of W.M., and Govt. Lot 2 in Section 3. Township 37 North, Range 1 East of W.M., described as follows:

Commencing at the intersection of Finkbonner Road and Lummi Shore Road, County Road No. 652, marked by a brass plug monument; thence South 71° 10' West 156.42 feet; thence South 31.70 feet to the southerly right-of-way line of Lummi Shore Road; thence South 71° 10' West along said South right-of-way line 70.76 feet to the point of beginning; thence continuing along said southerly right-of-way line South 71° 10' West a distance of 96.44 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 63.53 feet, through a central angle of 47° 15' 57" a distance of 52.41 feet; thence south 16° 17' 27" East 332 feet more or less to the extreme low water line of Hale Passage; thence South 73° 42' 33" West 75.00 feet to a point; thence North 16° 17' 27" West 514.58 feet more or less to a point on the southerly right-of-way line of Haxton Way, County Road No. 783; thence South 70° 35' 31" East along said Southerly right-of-way line 267.28 feet to the point of beginning.

Except any portion of the Bedlands of the State of Washington Granted in Amendment to Easement and Right of Way No. CR-3099 as further amended and described in Department Order dated May 14, 1986.⁵

⁵ In case of any discrepancy in ownership between the description of tidelands provided herein and the description of bedlands claimed to be granted by the State of Washington, this lease shall be deemed to cover all tidelands within the description above that are claimed by the Lummi Nation and/or the United States in trust for the Lummi Nation.

ORIGINAL

Uplands Lease Agreement for Lummi Island Ferry Use at Gooseberry Point

This lease agreement is made on this 27th day of October, 2011 and entered into between the Lummi Nation, acting by and through its governing body, the Lummi Indian Business Council, (hereafter identified as "Lessor"); and Whatcom County, a municipal corporation and political subdivision of the State of Washington, (hereinafter identified as "Lessee"), acting through its chief executive officer, the Whatcom County Executive, with the approval of the County Council.

History: On February 14, 1963, the parties first executed a lease for the County's use of the tidelands held in trust by the United States for Lummi Nation and its members. The lease, as required, was also approved by the Secretary of the Department of the Interior, and by its terms was a lease for 25 years. On May 12, 1988, the Lummi Nation and Whatcom County executed a new lease for a term of twenty-five years with a renewal option, with a beginning date of February 14, 1985, the provisions of which were directed by the 1982 consent decree for a civil rights lawsuit (*Lummi Indian Tribe v. Hallauer, et al.* Civ. No. C79-682R [W.D. Wash.]), for certain uplands and tidelands located on the Lummi Indian Reservation, the tidelands portion of which is held by the United States in trust for the Lummi Nation and its members. The purpose of the lease was to allow the County to use pertinent portions of the Lummi Nation tidelands and the Lummi Nation-owned uplands to continue operating the Lummi Island Ferry from Gooseberry Point.

The lease addressed use of trust lands held by the United States for the Lummi Nation and its members, thus requiring approval by the Secretary of the Department of the Interior or authorized designee in order to have a valid lease. The Secretary never approved the tidelands portion of the lease. In spite of the absence of Secretarial approval, the parties carried out their promises and obligations under the 1988 lease for the initial 25 year term. The initial term provided in the agreement and consent decree that was not approved by the Secretary or designee expired on February 14, 2010. The Lummi Nation declined to further renew or extend under the terms of the 1988 lease and the consent decree that had not been approved by the Secretary of the Department of the Interior or his/her authorized signatory as required by law for validation. Thereafter the parties negotiated new lease terms for both pertinent tidelands and uplands, the negotiated upland lease terms being contained herein.

Definitions:

"Agreement" as referred to herein means the content of this document, its attachments, and all amendments thereto, including any further implementation agreements.

"Framework Agreement" means the agreement signed by the parties that is designated as such and that contains various principles for constructing and interpreting the several agreements pertaining to the lease of the ferry landing area.

"Tidelands Lease" means the agreement signed by the Parties and the Secretary of the Department of the Interior or his authorized representative, governing the use of the tidelands at Gooseberry Point that are held in trust by the United States government.

"Uplands Lease" means the agreement signed by the Parties governing the use of lands owned by Lummi Nation within the staging area for the County ferry operation lying between the County road known as Haxton Road or Lummi View Drive and the tidelands south of that upland area.

"Parties" as used herein refers to the Lummi Nation, also designated herein as "Lessor", and Whatcom County, also designated herein as "Lessee" and "County".

"Secretary" means the Secretary of the Department of the Interior of the United States, or his or her authorized representative.

Lease Terms: This lease agreement is entered into pursuant to the provisions of existing law. In the future, should the leased portions of the uplands become federally-held trust lands, these lands may then be subject to restrictions on alienation by the Lummi Nation and subject to regulation under the provisions of 25 CFR Section 162, as presently existing or hereafter amended. At this time, however, the uplands that belong to the Lummi Nation and are covered by this agreement are held in fee status by it, and are not held in trust by the U.S. government. Thus, the Lummi Nation represents and warrants that no approval is presently needed by the Secretary of the Department of the Interior or authorized designee for the lease agreement covering the upland properties related to the ferry operation. If approval by the Secretary or other government agency is ever required during the term of this lease, the Lummi Nation hereby agrees that it will recommend such approval under the terms contained herein.

In consideration for covenants and agreements hereinafter provided for, Lessor grants this lease to Lessee for the land and premises described as follows in attached Exhibit A [legal description of uplands owned by the Lummi Nation].

This lease agreement addresses only the uplands portion of the agreement between the parties. Terms in this agreement apply only to the uplands portion of the agreement. The terms of this agreement are to be supported and governed by the Intergovernmental Framework Agreement which was executed on October 21, 2011 by the Lummi Nation and Whatcom County, the terms of which are incorporated here by reference as if fully set forth herein, with the approvals given here fully extending to the substantive provisions thereof, as if they were contained and set forth herein, and supplemented by a Tidelands Lease Agreement executed on October 21, 2011.

1. Use of premises. It is agreed by Lessor and Lessee that the property herein described shall be used for the purpose of operating a public ferry landing, dock or slip to Lummi Island, together with approaches, roads and related facilities necessary for that purpose. In using the leased premises it is expressly agreed that Lessee must:

- a. Comply with all applicable federal, state and local laws, ordinances and regulations, including environmental requirements that are in force or which may hereafter be in force;
- b. Secure and keep up to date all necessary permits and licenses; and
- c. If and when Lummi Nation develops a marina at Gooseberry Point, the County shall modify the configuration of its dock, if and as necessary and consistent with technical feasibility. These actions of the County may include alteration of the waterward end of its dock as presently located for loading and unloading so as to accommodate a different angle of approach by the ferry.¹ The parties shall fully cooperate with each other in the construction phase(s) and in all permit processes that may be necessitated by application for and construction of such a dock renovation, reconfiguration, and marina, with the goal of reducing environmental impact, reducing the need for environmental mitigation, and reducing costs to the parties. The costs associated with dock renovation, reconfiguration, redesign and any other type of modification of the dock shall be the full responsibility of the Lessee.

In the event Lessee shall discontinue use of the leased premises for the purposes enumerated herein, with the exception of brief periods of interruption in use due to weather or operational issues promptly addressed (such as repairs or other maintenance or construction), this lease shall terminate and the leased upland premises shall revert to Lessor, pursuant to the provisions of Section 11, Violations, other Termination of Lease, below.

2. Term. The term of this lease shall be for a period of thirty-five years, with the commencement date being the date this document is fully executed between Lessor and Lessee. The term of this lease shall terminate on that same day of document execution during the year 2046. The period of this lease shall be identified as the "lease term."

3. Consideration for lease. Consideration for this uplands lease shall consist of the following components:

- a. Lessee covenants and agrees to initiate and complete the four "immediate" projects listed on Exhibit B within one year of execution of this Agreement "

¹ The parties are in agreement that the County's dock need not be moved from the space that it presently occupies but that if necessary to accommodate construction of a marina in the area of the current ferry approach to the dock, the waterward end of the dock where unloading and loading occurs would be re-oriented to accept a different angle of approach by ferry traffic so as to minimize interference with the siting of a marina.

b. Lessee covenants and agrees to dedicate County funds having a present value of \$6 million in three installments of \$2 million each, during year 1, at year 6, and at year 15 of this lease, for expenditure upon road and/or safety improvements consistent with state law provisions for expenditure of road funds and as further described in attachments hereto, subject to the terms and conditions set forth in Exhibit C, attached hereto and incorporated by reference herein.

4. Adjustment Of Third Installment for CPI. The first two installments shall be in the amount of \$2 million each at the time of dedication without adjustment for inflation. The third installment of \$2 million, made available under the terms and conditions stated under Section 3 and Exhibit B, shall be adjusted to reflect the change rate of inflation for the time from the execution of this agreement to the time of its use, 2026. The 2026 installment is the sum of two values, 1) a base payment of \$2,000,000; and 2) an adjustment for inflation.

The adjustment for inflation uses the December 2025 CPI-U and December 2011 CPI-U National Index. The adjustment for inflation is calculated as follows: Subtract the (2011 CPI-U) from the (2025 CPI-U). Divide the difference by the (2011 CPI-U). Multiply the product by the base payment of \$2,000,000.

In formula form:

$$2026 \text{ Installment} = \left(\left(\frac{(2025 \text{ CPI-U}) - (2011 \text{ CPI-U})}{(2011 \text{ CPI-U})} \right) \times \$2,000,000 \right) + \$2,000,000$$

5. Lummi Passage Upon the Ferry. During the term of the lease, Lessee shall grant free foot and non-commercial passenger vehicle passage upon and across the ferry operated by Lessee between Gooseberry Point and Lummi Island to those persons going to Lummi Island for legitimate tribal business who are either enrolled members of the Lummi Nation or employees thereof, and who also present appropriate identification issued by the Nation, including Lummi Indian Business Council Identification cards or current fishing cards/licenses as issued by the Lummi Nation.

6. Improvements. Any buildings, docks, or other structures or improvements placed upon the leased premises by Lessee shall become the property of Lessor upon termination or the expiration of this lease, subject however, to Lessee's right to take possession of, and remove any such improvement at its sole expense within 90 days following expiration or termination of this lease. If Lessee elects to remove the improvements, it shall return the leased premises to Lessor in good condition and restore the surface of the ground, including areas underwater, to a pre-project condition.

7. Unlawful Conduct. Lessee agrees that it will not use or cause or allow to be used any part of the leased property for any unlawful conduct or purpose.

8. Subleases and Assignments. No sublease, assignment, or amendment of this lease may be made without agreement of the Parties. This agreement is based on a government-to-government relationship between the Lummi Nation and Whatcom County for the provision of public access to Lummi Island. Any entity operating a ferry under contract with the County shall not be precluded from doing so by this clause, and no sublease, assignment, or amendment of this lease shall be necessary for that circumstance provided that such party shall act consistently with the terms and conditions set forth herein.

9. Interest of Members of Congress. No Member of, or Delegate to Congress shall be admitted to share any or part of this contract or any benefit that may arise herefrom.

10. Federal Fee to Trust Process. Lessor will be making an application to the United States Secretary of the Interior to take the Lummi Nation-owned uplands as identified in Exhibit A into Indian Trust Status pursuant to 25 CFR §151. Lessee shall refrain from opposing, contesting and objecting to the application for restricted status lands as it pertains to lands owned by the Lummi Nation within the external boundaries of the land described in Exhibit A, attached hereto. Lessee shall notify the United States Department of the Interior that it has no objection to the acceptance of the above-described property owned by Lummi Nation into trust or restricted status by the United States pursuant to 25 CFR §151 and any other applicable law or regulation, subject in any event to the lease granted herein, provided that Lessee's rights hereunder are preserved.

11. Violations, other Termination of Lease. Any violations of this lease may be acted upon in accordance with the Intergovernmental Framework Agreement and applicable provisions of law, including but not limited to the provisions of 25 CFR §162, should the leased premises become restricted trust lands, as presently existing or hereafter modified, subject to and consistent with the provisions for dispute resolution contained in Section 13, below. Default and abandonment shall be violations of this lease.

- a. Notice of Violation, Default and Abandonment. Upon any occurrence of a violation, default or abandonment under this lease, Lessor shall provide written notice directed to Lessee and give Lessee 30 days to cure or correct the violation or default or to prove it has not abandoned the premises. At the end of the 30-day period, if the violation or default has not been corrected or Lessee has not proved that it has not abandoned the premises, Lessor shall be permitted to give written notice of termination of the lease to Lessee.
- b. Notice of Termination. If one or more violations or defaults described above are not cured to the satisfaction of Lessor within 30 days,

Lessor reserves the right to terminate this agreement with by giving written notice to Lessee as provided in Section 16 below. In the event of a termination under this provision, Lessee shall have 90 days to remove improvements in conformance with Section 6 of this Agreement. Lessor's recourse in case of termination shall be its repossession of its property as set forth in d, below

- c. Waiver or acceptance. A waiver or acceptance by Lessor of any violation, default or abandonment under the terms of this agreement shall not operate as a release of Lessee's responsibility for any prior or subsequent violation or default. No assent, express or implied, to any breach of Lessee's duties or covenants shall be deemed a waiver of any other breach, either former or subsequent, of Lessee's duties and covenants.
- d. If the Lessee shall cease using the leased premises, it shall give prompt written notice of the same to Lessor. Lessor's remedy in that instance shall be its retaking possession of the premises that had been under lease to Lessee. If Lessee exercises this option, it shall leave the premises in reasonable order and good condition.

12. Hold Harmless/Indemnification. Lessee, its successors and assigns, will indemnify, protect, save and hold harmless Lessor, its authorized agents and employees from all claims, actions, costs, damages or expenses of any nature whatsoever by reason of the acts or omissions of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, arising out of or in connection with any acts or activities of Lessee, its assigns, agents, contractors, licensees, invitees, and/or employees on the lease premises and authorized by this lease. Lessee further agrees to defend Lessor, its agents or employees, in any litigation arising from such acts or omission of Lessee, its assigns, agents, contractors, licensees, invitees, and employees, including payment of any costs or attorneys' fees.

This obligation shall not include such claims, costs, damages, or expenses which may be caused by the sole negligence of Lessor or its authorized agents or employees; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) Lessor, its agents or employees, and (b) Lessee its agents or employees and involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of Lessee or Lessee's agents or employees.

13. Dispute Resolution. All disputes between the Parties relating to or arising from this Uplands Lease or any future agreement implementing any of the foregoing, shall be conducted as set forth herein:

- A. Any disagreement or dispute that arises between the Parties as to the interpretation, violation, or performance of any of the agreements to

which this provision applies, or any rights or obligation arising thereunder, shall be resolved whenever possible by the Parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations. The Party initiating the resolution process shall serve on the other Party a written notice describing the dispute and invoking the dispute resolution process. The first meeting of the Parties shall occur not later than ten (10) days after receipt of written notice describing the dispute, unless both Parties agree in writing to an extension of time.

- B. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) days after the first meeting as set out in this Section, then either Party may seek a resolution by arbitration in accordance with the procedures set forth herein. The Parties are required to participate in arbitration. Any claim, controversy or dispute subject to dispute resolution under this provision shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. To the maximum extent applicable, the Federal Arbitration Act (Title IX of the United States Code) will govern such arbitration. No rule or provision which may be construed to broaden the Nation's limited waiver of sovereign immunity beyond that contained in this Agreement shall apply. Such arbitration shall be held in Bellingham or such other place as the Parties agree. The arbitrator shall be empowered to impose sanctions and take such other actions as he or she deems necessary to the same extent a judge could impose sanctions or take such other actions pursuant to the Federal Rules of Civil Procedure and applicable law. The mutual commitment by the Parties to resolve disputes through arbitration shall not prevent either Party from seeking injunctive relief to compel arbitration and/or maintain the status quo pending resolution of the arbitration proceeding, through application to the federal District Court for the Western District of Washington; provided, however, that in the event such federal court declines jurisdiction over such claim for injunctive relief, such relief may be sought in the courts of the State of Washington, provided, however, such relief is consistent with this Agreement and the Nation's limited waiver of sovereign immunity.
- C. The arbitration shall be heard by a single arbitrator determined by the Parties. If the Parties cannot agree on an arbitrator, then the American Arbitration Association shall appoint one. The arbitrator should be a retired federal judge, if available. If such a person is not available, the arbitrator must be a licensed attorney or retired judge with some knowledge of federal Indian law and real property transactions involving Indian trust lands. The arbitrator must be unbiased and neutral.

- D. The arbitration hearing shall be conducted within ninety (90) days after an arbitrator is appointed unless the parties agree in writing to an extension of this period. The arbitration provisions hereof shall be self-executing, and the decision of the arbitrator shall be final and binding upon the Parties, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation and enforcement of the arbitration judgment, except as provided in 9 U.S.C. §10. The arbitration judgment shall be in writing and give reasons for the decision. Each side shall bear its own costs, attorney's fees, and one half of the costs and expenses of the arbitrator. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Western District of Washington. In the event that the District Court determines that it lacks jurisdiction, the award may be confirmed by and entered in the courts of the State of Washington; provided, however, such award is consistent with this Agreement and the Nation's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration.
- E. No causes of action or claims in law or equity are cognizable against the County except actions against the County itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. Lummi Nation's remedy against the County in case of an uncured breach of the agreement(s) by the County shall be termination of the lease agreement(s) and vacation of the leased premises by the County. The Nation shall not bring any action arising from this Agreement, or any implementation agreement, against the County's council members, employees, agents or attorneys, except in official capacity for the sole purpose of effectuating on behalf of the County any and all court orders that may be issued pertaining to this agreement.
- F. The Nation hereby grants a limited waiver of its sovereign immunity from suit solely for actions brought by the County or its approved successor in interest (and no other person or entity) to enforce the terms of this Agreement, including an action to compel arbitration, specific performance and/or injunctive relief if warranted, consistent with the procedures for dispute resolution provided herein. This limited waiver is to be strictly and narrowly construed in favor of the Nation and may be enforced only under the conditions set forth herein. No causes of action or claims in law or equity are cognizable against the Nation except actions against the Nation itself for specific performance or injunctive relief arising out of this Agreement, including the Tidelands Lease, the Framework Agreement, or any agreement

implementing those agreements. In the event the County or its successors obtain a judgment or arbitration award as provided in this section and seeks to enforce such award, the Nation hereby agrees, if the federal district court declines to exercise jurisdiction, to submit to the jurisdiction of the state courts of Washington for the sole purpose of execution of the arbitration award of judgment. The Nation does not waive its sovereign immunity with respect to actions by third parties or disputes between the Nation and the County that do not arise out of this Agreement, the Tidelands Lease, the Framework Agreement, or any agreement implementing those agreements. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of the Nation, except in official capacity for the sole purpose of effectuating on behalf of Lessor any and all court orders that may be issued pertaining to this Agreement. The Nation's limited waiver of sovereign immunity shall be further evidenced by a resolution from the Lummi Nation Indian Business Council, which shall also waive any requirement for exhaustion of tribal remedies and jurisdiction in the Lummi Nation Tribal Court. In the event of a lawsuit involving this Agreement, venue shall be proper only in the U.S. Federal District Court for the Western District of Washington, except as provided in Section D, above. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States in this matter.

- G. The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims arising from or related to this Agreement or an implementation agreement shall be and remain confidential to the extent permitted by applicable law, except as otherwise mutually agreed by the Parties. The Parties recognize that the County is subject to Washington State's Open Meetings Act and Public Records Act, and both settlement agreements and arbitration outcomes are subject to public disclosure by the County to those making such requests.

- H. The Parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement or any implementation agreement, the Parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Parties shall continue their performance of the provisions of this Agreement.

14. Binding Contract. This lease agreement shall not become binding upon Lessee unless and until accepted and approved by Lessee through the County Council, and signature by the County Executive or his duly authorized representative. This lease agreement shall not become binding upon Lessor unless and until accepted and approved for Lessor by the Chairperson of the Lummi Nation or his duly appointed representative with Lummi Indian Business Council approval. Further, this lease agreement is not binding on either party unless and until the tidelands lease is approved by the Secretary of the Department of the Interior, or his duly appointed representative. The covenants and agreements herein shall extend to and be binding upon the heirs, successors and assigns of the parties to this lease.

15. Modifications. This instrument contains all the agreements and conditions made between the parties with respect to the uplands at Gooseberry Point Ferry Terminal and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto.

16. Interpretation. This Agreement shall be governed and construed in accordance with the laws of the State of Washington, except where matters exclusively of federal law are concerned (such as the provisions regarding lease of restricted Indian lands), notwithstanding any choice of law provisions. This Agreement shall not be construed for or against any party based on drafting or preparation. Each Party has been represented by legal counsel of its choosing throughout the negotiation of this Agreement and the Framework Agreement and Tidelands Lease. Captions in this Agreement are included for convenience only and in no way define or limit the meaning or intent of any provision herein.

17. Notices. All notices required to be given under this lease shall be made in writing and shall be delivered or sent by certified or overnight mail addressed to the parties or their successors at the address listed below, unless a different address has been designated in writing and delivered to the other party.

For the Lummi Nation:

For Whatcom County:

Lummi Nation Chairman
2616 Kwina Road
Bellingham, WA 98226
Telephone: 360-384-2140

Whatcom County Executive
311 Grand Avenue, Suite 108
Bellingham, WA 98225
Telephone: 360-676-6717

18. Signatures.

APPROVED by the Lummi Indian Business Council Resolution # 2011 - 116, July 26, 2011).

LUMMI NATION

Clifford Cultee
Clifford Cultee, Chairman

Date October 27, 2011

Approved as to form

Mary M. Neil
Mary M. Neil, Reservation Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 27th day of October 2011, before me personally appeared Clifford Cultee, to me known to be Chair of the Lummi Indian Business Council, the federally-recognized Indian tribe that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Indian tribe, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Lummi Indian Business Council.

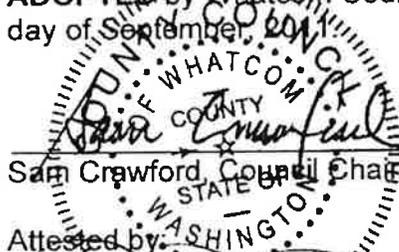
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SUBSCRIBED AND SWORN to before me this 27 day of October, 2011.

Justina Taylor
Notary Public
My Commission Expires: 11/4/2013

ADOPTED by Whatcom County Council in an open public meeting on the 13th day of September, 2011.



Sam Crawford
Sam Crawford, Council Chair

Date 10/28/11

Attested by:
Dana Brown-Davis
Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY EXECUTIVE

Pete Kremen
Pete Kremen, County Executive

Date 11-15-11

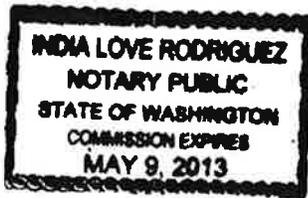
Approved as to form

Daniel L. Gibson 10/28/11
Daniel L. Gibson, Asst. Chief Civil Deputy Prosecuting Attorney

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss:

On this 15th day of November 2011, before me personally appeared Pete Kremen, to me known to be Executive of Whatcom County, the public body that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said public body, for the uses and purposes herein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of the Whatcom County Council.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SUBSCRIBED AND SWORN to before me this 15 day of November, 2011.
India Love Rodriguez
Notary Public
My Commission Expires: 5.9 2013

EXHIBIT A
LEGAL DESCRIPTION OF UPLANDS OWNED BY THE LUMMI NATION²

All that portion of Govt. Lot 4 in Section 34, Township 38 North, Range 1 East of W.M., and Govt. Lot 2 in Section 3. Township 37 North, Range 1 East of W.M., described as follows:

Commencing at the intersection of Finkbonner Road and Lummi Shore Road, County Road No. 652, marked by a brass plug monument; thence South 71° 10' West 156.42 feet; thence South 31.70 feet to the southerly right-of-way line of Lummi Shore Road; thence South 71° 10' West along said South right-of-way line 70.76 feet to the point of beginning; thence continuing along said southerly right-of-way line South 71° 10' West a distance of 96.44 feet to a point of curvature; thence along the arc of a curve to the left having a radius of 63.53 feet, through a central angle of 47° 15' 57" a distance of 52.41 feet; thence south 16° 17' 27" East 332 feet more or less to the extreme low water line of Hale Passage; thence South 73° 42' 33" West 75.00 feet to a point; thence North 16° 17' 27" West 514.58 feet more or less to a point on the southerly right-of-way line of Haxton Way, County Road No. 783; thence South 70° 35' 31" East along said Southerly right-of-way line 267.28 feet to the point of beginning.

Except any portion of the 2nd class tidelands abutting lying within the bounds of the Lummi Reservation.

Except any portion of the Bedlands of the State of Washington Granted in Amendment to Easement and Right of Way No. CR-3099 as further amended and described in Department Order dated May 14, 1986.

Except any portions of the above description contained in "Grant for Road Right of Way approved by Secretary, Department of the Interior March 29, 1920, October 19, 1921, May 16 1923, Right of Way Granted 60 feet wide." DOI Office of Indian Affairs for County Road #652 AKA Lummi Shore Drive.

Together with and subject to any portion of the above description affected by the Vacation and re-alignment of Lummi Shore Road dated May 9, 1958

Except any portions of the above description conveyed to Whatcom County By deeds recorded Under Auditors File Numbers 605557, 855253 and 727389.

Except any portion dedicated by the Plat of Gooseberry Point as recorded in Volume 7 of Plats , Page 70.

² It is the intent of the Parties that this Uplands Lease and the consideration given for it provide for lease by the Lummi Nation to Whatcom County all uplands owned by the Lummi Nation within the external boundaries of the upland property described herein, in the event that the County's ownership of upland properties is different from that set forth in the description above.

Basis for Description: Previous County Ferry lease, Plat of Gooseberry Point, Records of Survey Auditors file numbers 2070503350, 1574253, 92081350 and 1971002471. Final Order of Vacation, Lummi Shore road Commissioner's proceedings dated 9th of May, 1958.

EXHIBIT B

The immediate improvements for which provision is made in Section 3. a, Consideration for Lease, shall be completed within one year from the execution of this document by the County as follows:

- 1) Purchase and installation of four electronic speed monitoring signs along Haxton Way;
- 2) Reduction of speed limits, after due public process, in agreed, specified locations along Haxton Way;
- 3) Installment of traffic calming measures including rumble strips and additional signage as agreed, at agreed, key locations along Haxton Way;
- 4) Implementation of traffic queuing measures at the ferry landing area at Gooseberry Point in order to reduce backup of vehicles waiting to use the ferry and resulting congestion along Haxton Way/Lummi View Drive, to be operational by October 1, 2012.

EXHIBIT C

The long-term road and traffic safety improvements, and funding for such improvements, for which provision is made in Section 3. b, Consideration for Lease, shall be administered as follows:

- i. The County shall make the \$6 million available for use in \$2 million increments during year 1, at year 6, and at year 15 (the latter installment subject to CPI) of the agreement;
 - ii. While the money shall be dedicated by the County in the amounts and at the times stated above, expenditure of the dedicated funds shall be contingent upon the commitment and receipt of matching funds from non-County sources at least dollar for dollar with dedicated County funds for each project;³ and the County and Lummi Nation shall fully cooperate in the effort to obtain non-County matching funds for which the agreed projects are eligible;
 - iii. The projects to be financed and undertaken with these County funds shall be agreed upon by the parties and agreement by the parties on the projects to be undertaken shall not be unreasonably withheld.
 - iv. The expenditures of these County funds shall be subject to and consistent with the restrictions placed by state law as contained in RCW 36.82.070 upon the expenditure of road funds as is presently in effect or as hereafter amended;
 - v. The projects shall be so designed and selected as to maximize their respective value to Lummi Nation as well as to the County consistent with the requirements stated in iv, above;
 - vi. The projects to be funded with the funds dedicated hereunder shall not include County expenditures for parking or for alterations to the dock itself as may potentially occur

³ The receipt of matching funds may not always coordinate precisely with the performance of work. It is the intention of the parties that for any project executed under this Agreement, the non-County funds received shall, by the completion of the project match at least dollar for dollar the expenditure of County funds. The effect of this is that County funds may be advanced to pay for costs incurred on a project upon adequate commitment from a granting agency of match funds in the necessary amount.

- pursuant to Section 1.c in the agreement to which this exhibit is appended;
- vii. The County shall identify the agreed projects as priority projects on its six-year Transportation Improvement Program project list and reflect the commitment of County funds there in order to compete for grant funding;
 - viii. County engineering staff shall perform preliminary engineering necessary in order to create a scope of work and budget for the agreed projects so that the projects may effectively compete for matching funds from non-County sources;
 - ix. If there are instances in which the parties are not able to reach agreement as provided, the parties shall, upon request of either one of the parties, submit the matter to third-party dispute resolution as set forth in Section 13 of the Uplands Lease Agreement, and as provided in the Framework Agreement of which the Uplands Lease Agreement to which this exhibit is appended is a part.
 - x. The parties agree that for the Year 1 increment of \$2 million, the county will prioritize at least the following safety projects on the Transportation Improvement Program (TIP) project list and maintain these projects as priorities on the TIP until they are funded:
 - a. Pedestrian walkway facilities⁴ from Gooseberry Point Ferry to McKenzie Road north along Lummi View Dr (Haxton Way)
 - b. Pedestrian walkway facilities from Gooseberry Point Ferry to McKenzie Road east along Lummi View Dr
 - c. Pedestrian walkway facilities from McKenzie Road to Smokehouse Road along Haxton Way
 - d. Pedestrian walkway facilities from Smokehouse Road to Balch Road along Haxton Way

⁴ "Sidewalk" is the term colloquially used for pedestrian walkways but since it is a term of art in the traffic engineering lexicon with a more limited meaning than what the Parties may choose to apply, a broader term is used here instead. The general intent is to provide safe walking facilities for pedestrians in the above-listed areas, consistent with the availability of the stated funding and matching funds.

ORIGINAL

INTERGOVERNMENTAL FRAMEWORK AGREEMENT BETWEEN THE LUMMI NATION AND WHATCOM COUNTY

THIS AGREEMENT is made this 21st of October, 2011, between the "Parties" (Whatcom County, a Washington municipal corporation, hereinafter referred to as the "County," and the Lummi Nation, a federally recognized Indian Tribe, hereinafter referred to as the "Lummi Nation" or "the Nation").

WHEREAS, the people of the Lummi Nation have lived in and around the area that is now Whatcom County, Washington, since time immemorial and the County was formed in 1854; and

WHEREAS, the Lummi Nation and the County share respective interests, including:

1. Preserving the rich cultural and natural resources history of the area in and around the Lummi Reservation ("Reservation"), for generations to come;
2. Improving traffic safety and transportation options for the Lummi Reservation and the Lummi Island communities;
3. Resolving differences in how their respective goals are to be achieved and avoiding the cost and uncertainty of litigation through a mutually beneficial resolution of the issues addressed by this Agreement;
4. Providing a framework to resolve known issues that relate to this subject matter, address short term needs, and create significant new long-term opportunities to implement the goals of this Agreement; and

WHEREAS, this Agreement recognizes that the Lummi Nation seeks increased safety within the boundaries of the Reservation, to obtain fair compensation for uses of tribally-owned land, and to maintain space for future waterfront development at Gooseberry Point; and

WHEREAS, this Agreement recognizes that the County desires to maintain ferry service to Lummi Island from the current dock location at Gooseberry Point; and

WHEREAS, this Agreement encourages and provides the foundation and framework for mutual respect and cooperation between the Parties which will benefit all the people of the Whatcom County community, particularly those who reside at Lummi Island and the Lummi Reservation; encourages a cooperative relationship which will reduce future conflicts; provides a framework of principles for implementing the

provisions of leases executed by the Parties for the Lummi Island ferry; and provides greater certainty to the County and the Lummi Nation;

NOW, THEREFORE, we, the undersigned, for consideration provided in the Tidelands Lease and Uplands Lease appended hereto, enter into this Agreement between the Lummi Nation and Whatcom County to work cooperatively into the future to achieve the purposes of the agreements for tidelands and uplands leases that have been appended hereto and made a part hereof.

I. DEFINITIONS

"Agreement" as referred to herein means the content of this document, its attachments, which include the "Tidelands Lease" and "Uplands Lease", and all amendments thereto, including any further implementation agreements.

"Tidelands Lease" means the agreement signed by the Parties and the Secretary of the Department of the Interior or his authorized representative, governing the use of the tidelands at Gooseberry Point that are held in trust by the United States government. The Tidelands Lease is attached to this Agreement and is deemed to be part of it.

"Uplands Lease" means the agreement signed by the Parties governing the use of lands owned by Lummi Nation within the staging area for the County ferry operation lying between the County road known as Haxton Way or Lummi View Drive and the tidelands south of that upland area. The Uplands Lease is attached to this Agreement and is deemed to be part of it.

"Parties" as used herein refers to the Lummi Nation, also designated herein as "Lessor", and Whatcom County, also designated herein as "Lessee" and "County".

"Secretary" means the Secretary of the Department of the Interior of the United States, or his or her authorized representative.

II. PURPOSE OF THE AGREEMENT

The purpose of this document is to formally memorialize the agreement of the Parties to implement in good faith the goals and objectives identified by the Parties in order to establish terms for continuing ferry service to Lummi Island from Gooseberry Point on the Lummi Indian Reservation, to jointly pursue immediate and future safety improvements that benefit the ferry passengers and Reservation residents, and to

accommodate the Nation's plans to develop a marina at Gooseberry Point with continued operation of the Lummi Island ferry.

The County's ability to continue providing ferry service from Gooseberry Point to Lummi Island is contingent upon its ability to ensure traffic safety improvements and traffic mitigation efforts, to provide fair compensation for use of Lummi tribally-owned lands, and to maintain and enhance the Gooseberry Point area as a viable economic development area for the Lummi Nation.

This Agreement provides a framework for implementation of two land leases between the Parties that are executed simultaneously with this Agreement, and also resolves claims between the Parties regarding prior use by the County of the tribal lands described in the those leases.

The Parties have reached agreement on a tidelands lease and a lease of adjoining uplands, both of which are necessary for the County to continue to operate the Lummi Island ferry from its current location at Gooseberry Point on the Lummi Reservation. The leases, and more particularly the uplands lease, require the County to take certain actions in the future regarding the operation of the ferry and the undertaking of traffic safety and road improvement projects within the Lummi Reservation. These actions include, but are not limited to, identifying, prioritizing, funding and constructing traffic safety projects, and operating the ferry facilities in a manner that accommodates Lummi's future economic development and fisheries interests in the Gooseberry Point/Hales Passage area.

Because the nature and scope of the County's undertakings cannot be presently determined beyond that already presented in the Tidelands Lease and Uplands Lease, implementation of the County's commitments under the leases shall be addressed in a series of "implementation agreements" that will be negotiated and executed by the Parties in the future. The Parties now agree that the principles set out in this Framework Agreement shall guide those future negotiations. In addition, the Parties agree that this Framework Agreement provides the context within which the Tidelands and Uplands Leases were negotiated. To the extent that those leases may require implementation, interpretation or construction in the future, this Framework Agreement shall be used as an aid and resource by the Parties and by any person charged with responsibility for resolving disputes that may arise under the leases.

The Parties also resolve in this Framework Agreement all disputes between them that have arisen or could have arisen regarding the County's operation of the Lummi Island ferry from the Gooseberry Point facilities between February 14, 1985 and the date of execution of this Agreement. The County has tendered to the Lummi Nation

deeds to certain lands within the Lummi Reservation as described in that certain Consent Decree (Docket No. 479) dated October 28, 1982 in Civil Action No. C79-682R, United States District Court, Western District of Washington, captioned "Lummi Indian Tribe, et al v. Hallauer, et al" and has paid to the Lummi Nation the sum of \$16,667 per month beginning in February 2010 and continuing through the date of execution of this Agreement. The Lummi Nation has allowed the County to continue to operate the Lummi Island ferry from the Gooseberry Point facilities during this period despite its position that no valid leases existed authorizing such use. The Parties now agree that those transfers and payments and the Nation's forbearance of any action to interrupt or terminate the County's use of the tribal lands, together with the execution of the new tidelands and uplands leases referenced herein when approved by the United States where necessary, fully and completely resolve any and all claims regarding that prior period of use that each Party could have asserted against the other regarding the existence, validity or necessity of tribal permission for the County's use of the tribal lands, and the adequacy of the consideration paid to the Nation for such use.

The Parties agree to act in good faith and to use their best efforts to negotiate the implementation agreements appropriate to specific goals and time frames identified by the Parties.

III. BACKGROUND

The Lummi people have lived, fished, hunted, gathered, and conducted cultural practices and commerce in and around present day Whatcom County since time immemorial. The Lummi people reserved the ability to continue their way of life throughout Washington, including but not limited to Whatcom County, as part of their treaty with the United States in 1855. In *United States v. Washington* 384 F. Supp. 312 (W.D. Wash.) *aff'd* 520 F.2d 676 (9th Cir. 1975), *cert. denied* 423 U.S. 1086 (1976), the federal court affirmed the Lummi Nation's treaty right to take fish throughout the Nation's pre-treaty usual and accustomed areas (known as the Lummi U & A) including Hales Passage and the Gooseberry Point area.

The County has a rich history, beginning with its formation in 1854 (by the Washington territorial government pursuant to territorial law) and continuing to present day. The County's mission is that: *Whatcom County government will strive to promote, enrich and enhance the freedoms, opportunities and safety of its citizens. It will provide essential and desirable public services in a cost effective and accountable manner. It will provide vision, leadership and responsiveness while addressing community issues and conducting the business of the people. It will encourage community involvement in public issues while protecting the rights of the individual and encouraging respect for diversity. It shall serve as an active catalyst*

for individuals and other entities to participate in achieving a positive vision for the future of Whatcom County. This mission entails rendering appropriate types and levels of support to achieve public safety needs of the Lummi Reservation and to encourage achievement of the Lummi Nation's economic development goals.

The private Lummi Island Ferry Company began operating a ferry to Lummi Island from a dock constructed at Gooseberry Point during 1921. Whatcom County purchased the docks and associated upland properties on Lummi Island and at Gooseberry Point from the Lummi Island Ferry Company in 1924. There is no known record of a tidelands lease agreement between the Lummi Nation and either the Lummi Island Ferry Company or Whatcom County before 1963. This first lease (No. 4182) was for a 25 year period beginning on January 1, 1963. A second lease with a 25-year term was entered into between the Lummi Nation and Whatcom County on May 12, 1988, effective on February 14, 1985, the provisions of which were directed by the 1982 consent decree for a civil rights lawsuit (*Lummi Indian Tribe v. Hallauer, et al.* Civ. No. C79-682R [W.D. Wash.]). However, because that 1988 agreement was never approved by the Secretary of Interior or his authorized representative as required in the lease and the consent decree, the agreement was not legally valid or binding. Nonetheless, in consideration of the County's conveyance to the Nation of property identified in that agreement as payment for the term, the Nation extended use of the tidelands to the County through February 14, 2010.

IV. GEOGRAPHIC SCOPE OF THE AGREEMENT

The road improvement and traffic safety projects contemplated by the uplands lease agreement between the Parties shall be identified and performed within the three geographic areas set out herein. The primary geographic area shall be from the Slater Road-Haxton Way intersection in the north (where most vehicle traffic to and from the ferry enters and leaves the Reservation), to the current Ferry Terminal at Gooseberry Point in the south, together with the waters and shorelines adjacent to the current Ferry Terminal. The secondary geographic area shall be all other portions of the Lummi Reservation. The third geographic area shall be all other County roadways and roadway sections adjacent to the Lummi Reservation. In identifying road improvement and traffic safety projects as required by the uplands lease, priority shall be given first to projects within the primary geographic area, and then to projects in the secondary geographic area. Projects in the third geographic area shall be given priority only by mutual agreement of Parties, and agreement to such projects may be withheld without regard to the Party's reasons. Nothing in this Agreement shall prevent the Parties from mutually agreeing to pursue a project that would not otherwise have priority under the principles of this paragraph.

Elements of this Agreement are based on resolving issues between the County and the Lummi Nation within these areas. The County and the Lummi Nation do not relinquish their rights to resolve issues with other parties, either private or public, in other forums.

V. FRAMEWORK PRINCIPLES

The Parties agree that the principles set forth below will assist them in implementing the mutually beneficial lease agreements they have negotiated and executed. In implementing those leases, the Parties will:

- A. Use face-to-face meetings to identify, discuss, and attempt to resolve issues affecting and/or of interest to either party;
- B. Continue building a relationship that is based on consistent contact, mutual respect, and constructive dialogue;
- C. Establish a process for coordination between the Parties prior to inception of projects, development, and resource management involving the Nation and the County;
- D. Seek to achieve collective understandings, stability, certainty, and long-term cooperation between the Parties;
- E. Establish a method for sharing information at a technical level about the public works existing and occurring within the Geographical Scope of the Agreement as identified in Section IV;
- F. Work to address any cultural resources and/or cultural practices affected by activities carried out under this Agreement within the Geographical Scope of the Agreement;
- G. Understand, respect, and support each Party's processes for securing formal governmental approval from their respective governing authorities for this Agreement and all implementation agreements;
- H. Subject to the County's commitment to abide by the Washington Public Records Act and the Washington Open Meetings Act, in order to foster honest and frank discussion, meetings shall be conducted solely between the parties and any sharing of information with individuals outside the

respective governing authorities shall be subject to the principles set forth in I, below.

- I. Jointly discuss any potential media announcements or discussions regarding this Agreement and the implementation of this Agreement with the goal of agreement by the Parties in advance to ensure that the sentiments expressed represent an accurate and balanced description of the subject matter involved. The Parties will discuss foreseeable public events or open public meetings where media may be present and/or where communications on the Parties' discussions may occur with other parties – with the intent to avoid surprises if at all possible. Neither Party will make a statement characterizing the positions of the other Party to any media relating to the substantive issues under discussion. Statements to the media by the individual parties apart from those referenced above should be consistent with the principles stated herein and made with a view towards reaching agreement on issues within the scope of the Agreement, or other matters as may be appropriate;
- J. All notices related to face-to-face meetings, this Agreement, or any implementation agreement shall be transmitted to the following, or their successors:

For the Lummi Nation:

 Lummi Nation Chairman
 2616 Kwina Road
 Bellingham, WA 98226
 Telephone: 360-384-2140

For Whatcom County:

 Whatcom County Executive
 311 Grand Avenue, Suite 108
 Bellingham, WA 98225
 Telephone: 360-676-6717

VI. DISPUTE RESOLUTION

All disputes between the Parties relating to or arising from this Framework Agreement, the Tidelands Lease, the Uplands Lease, or any future agreement implementing any of the foregoing, shall be conducted as set forth herein, and the language below shall be incorporated within those agreements, either explicitly or by reference:

- A. Any disagreement or dispute that arises between the Parties as to the interpretation, violation, or performance of any of the agreements to which this provision applies, or any rights or obligations arising thereunder, shall

be resolved whenever possible by the Parties first meeting in person and conferring in a good faith attempt to resolve the dispute through negotiations. The Party initiating the resolution process shall serve on the other Party a written notice describing the dispute and invoking the dispute resolution process. The first meeting of the Parties shall occur not later than ten (10) days after receipt of written notice describing the dispute, unless both Parties agree in writing to an extension of time.

- B. If the dispute is not resolved to the satisfaction of the Parties within thirty (30) days after the first meeting as set out in this Section, then either Party may seek a resolution by arbitration in accordance with the procedures set forth herein. The Parties are required to participate in arbitration. Any claim, controversy or dispute subject to dispute resolution under this provision shall be submitted to binding arbitration conducted by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the AAA then in effect. To the maximum extent applicable, the Federal Arbitration Act (Title IX of the United States Code) will govern such arbitration. No rule or provision which may be construed to broaden the Nation's limited waiver of sovereign immunity beyond that contained in this Agreement shall apply. Such arbitration shall be held in Bellingham or such other place as the Parties agree. The arbitrator shall be empowered to impose sanctions and take such other actions as he or she deems necessary to the same extent a judge could impose sanctions or take such other actions pursuant to the Federal Rules of Civil Procedure and applicable law. The mutual commitment by the Parties to resolve disputes through arbitration shall not prevent either Party from seeking injunctive relief to compel arbitration and/or maintain the status quo pending resolution of the arbitration proceeding, through application to the federal District Court for the Western District of Washington; provided, however, that in the event such federal court declines jurisdiction over such claim for injunctive relief, such relief may be sought in the courts of the State of Washington, provided, however, such relief is consistent with this Agreement and the Nation's limited waiver of sovereign immunity.
- C. The arbitration shall be heard by a single arbitrator determined by the Parties. If the Parties cannot agree on an arbitrator, then the American Arbitration Association shall appoint one. The arbitrator should be a retired

federal judge, if available. If such a person is not available, the arbitrator must be a licensed attorney or retired judge with some knowledge of federal Indian law and real property transactions involving Indian trust lands. The arbitrator must be unbiased and neutral.

- D. The arbitration hearing shall be conducted within ninety (90) days after an arbitrator is appointed unless the parties agree in writing to an extension of this period. The arbitration provisions hereof shall be self-executing, and the decision of the arbitrator shall be final and binding upon the Parties, and without further appeal or any judicial confirmation, recourse, or other process other than for confirmation and enforcement of the arbitration judgment, except as provided in 9 U.S.C. §10. The arbitration judgment shall be in writing and give reasons for the decision. Each side shall bear its own costs, attorney's fees, and one half of the costs and expenses of the arbitrator. Judgment on any arbitration award may be confirmed by and entered in the United States District Court for the Western District of Washington. In the event that the District Court determines that it lacks jurisdiction, the award may be confirmed by and entered in the courts of the State of Washington; provided, however, such award is consistent with this Agreement and the Nation's limited waiver of sovereign immunity. Appeal may be taken from a decision of such court regarding confirmation and/or enforcement of the decision in arbitration.
- E. No causes of action or claims in law or equity are cognizable against the County except actions against the County itself for specific performance or injunctive relief arising out of this Agreement, or any implementation agreement. Lummi Nation's remedy against the County in case of an uncured breach of the agreement(s) by the County shall be termination of the lease agreement(s) and vacation of the leased premises by the County. The Nation shall not bring any action arising from this Agreement, or any implementation agreement, against the County's council members, employees, agents or attorneys, except in official capacity for the sole purpose of effectuating on behalf of the County any and all court orders that may be issued pertaining to this agreement.
- F. The Nation hereby grants a limited waiver of its sovereign immunity from suit solely for actions brought by the County or its approved successor in

interest (and no other person or entity) to enforce the terms of this Agreement, including an action to compel arbitration, specific performance and/or injunctive relief if warranted, consistent with the procedures for dispute resolution provided herein. This limited waiver is to be strictly and narrowly construed in favor of the Nation and may be enforced only under the conditions set forth herein. No causes of action or claims in law or equity are cognizable against the Nation except actions against the Nation itself for specific performance or injunctive relief arising out of this Agreement, including the Tidelands Lease, the Uplands Lease, or any agreement implementing those agreements. In the event the County or its successors obtain a judgment or arbitration award as provided in this Article VI and seeks to enforce such award, the Nation hereby agrees, if the federal district court declines to exercise jurisdiction, to submit to the jurisdiction of the state courts of Washington for the sole purpose of execution of the arbitration award of judgment. The Nation does not waive its sovereign immunity with respect to actions by third parties or disputes between the Nation and the County that do not arise out of this Agreement, the Tidelands Lease, the Uplands Lease, or any agreement implementing those agreements. This limited waiver does not allow any actions to be brought against the tribal council, tribal officers, tribal attorneys, tribal employees, tribal agents, tribal members, or any other person or entity acting on behalf of the Nation, except in official capacity for the sole purpose of effectuating on behalf of Lessor any and all court orders that may be issued pertaining to this Agreement. The Nation's limited waiver of sovereign immunity shall be further evidenced by a resolution from the Lummi Nation Indian Business Council, which shall also waive any requirement for exhaustion of tribal remedies and jurisdiction in the Lummi Nation Tribal Court. In the event of a lawsuit involving this Agreement, venue shall be proper only in the U.S. Federal District Court for the Western District of Washington, except as provided in Section D, above. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States in this matter.

- G. The Parties agree that any dispute resolution meetings or communications, arbitration proceedings, or agreements among the Parties settling or otherwise relating to any claims arising from or related to this Agreement or an implementation agreement shall be and remain confidential to the extent permitted by applicable law, except as otherwise mutually agreed by the Parties. The Parties recognize that the County is subject to Washington State's Open Meetings Act and Public Records Act, and both

settlement agreements and arbitration outcomes are subject to public disclosure by the County to those making such requests.

- H. The Parties agree that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement or any implementation agreement, the Parties shall continue to possess the rights, duties, and obligations set forth in this Agreement, and the Parties shall continue their performance of the provisions of this Agreement.

VII. AMENDMENT AND WAIVER

This Agreement may not be amended, modified, or supplemented except by written agreement between the Parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision.

VIII. GOVERNING LAW AND INTERPRETATION

This Agreement shall be governed and construed in accordance with the laws of the State of Washington, except where matters exclusively of federal law are concerned (such as the provisions regarding lease of restricted Indian lands), notwithstanding any choice of law provisions. This Agreement shall not be construed for or against any party based on drafting or preparation. Each Party has been represented by legal counsel of its choosing throughout the negotiation of this Agreement and the uplands and tidelands leases. Captions in this Agreement are included for convenience only and in no way define or limit the meaning or intent of any provision herein.

IX. PERSONS BOUND

This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, successors, and assigns. Neither this Agreement nor any interest herein may be assigned without the prior written approval of the other Party. Such approval shall not be unreasonably withheld and shall be provided within thirty days of a request without prior written consent to a longer period of time.

X. ROLE OF THE UNITED STATES

The United States will have the role it has retained for itself in approving leases of tribal trust lands. The role of the United States is one of trustee for the Nation with regard to lands and other tribal assets held in trust by the United States for the Lummi Nation and its members.

XI. FURTHER ASSURANCES

Each party agrees to in good faith do all acts and things and to make, execute, and deliver such written instruments as shall be reasonably necessary to carry out the terms and provisions of this Agreement, and all lease and any implementation agreements, and to implement the transactions contemplated herein and therein.

XII. SEVERABILITY

In case any one or more of the provisions contained in this Agreement, or any implementation agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein and any other application thereof, shall not in any way be affected or impaired thereby.

XIII. ENTIRE AGREEMENT

This Agreement, together with the associated Tidelands and Uplands Lease Agreements and attachments thereto, constitutes the entire agreement between the Parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties to this Agreement with respect to the subject matter of this Agreement.

XIV. SIGNATURES AND AUTHORITY

Each of the signatories below represents and warrants on behalf of the entity he purports to represent that he has been duly authorized to enter into and execute this Agreement and to commit to the performance of the obligations herein. This Agreement, together with any subsequent amendments or changes to this Agreement, and any subsequent implementation agreements, shall be approved by the Lummi Indian Business Council and the Whatcom County Council.

XV. NO THIRD PARTY BENEFICIARIES

This Agreement is exclusively for the benefit of the Parties hereto and may not be enforced by any party other than a party hereto and shall not give rise to liability to any third party other than as provided herein.

XVI. INDIVIDUAL RESPONSIBILITY

The rights, duties, obligations, and liabilities of the Parties under this Agreement shall be individual, not joint or collective. It is not the intention of the Parties to create, nor shall this Agreement be deemed or construed to create, a partnership or a joint venture. This Agreement shall not be deemed or construed to authorize any Party to act as an agent, servant, or employee for any other Party for any purpose whatsoever except as explicitly set forth in this Agreement or as mutually agreed in writing. In their relations with each other under this Agreement, the Parties shall not be considered fiduciaries except as expressly provided herein.

XVII. SIGNATURES

APPROVED by the Lummi Indian Business Council Resolution # 2011 – 116, July 26, 2011.

LUMMI NATION



Chairman

Date October 27, 2011

Approved as to form:



Mary M. Neil, Reservation Attorney

WHATCOM COUNTY EXECUTIVE

Pete Kremen

Date 11-15-11

Pete Kremen, County Executive

Approved as to form:

Daniel L. Gibson 10/28/11

Daniel L. Gibson

Whatcom County Asst. Chief Civil Deputy Pros. Atty.

ADOPTED by Whatcom County Council in an open public meeting on the 13th day of September, 2011.

WHATCOM COUNTY COUNCIL

Sam Crawford
Sam Crawford, Council Chair

Date 10/20/11

Attested by: *Dana Brown*
Dana Brown, Clerk of the Council

01042
107FA-~~607~~

FORM A
TAAMS Encoding Tracking Document
Bureau of Indian Affairs – Northwest Region

ENCODING

1. Type of Contract.

- a. Leasing (Business, Housing, Agricultural, etc.)
- b. Range Permit
- c. Forestry
- d. Right of Way
- e. Minerals
- f. Revocable Permit

2. Agency assigned contract number: 107 5091761146 HS
(10 digits)

Type of transaction: 23-LEASE

Indicate number of tracts: 1 Total acres: 0.43

1. LTRO document record number: None
Indicate NONE, if not recorded in LTRO

Date recorded in LTRO: _____

4. Encoding performed by: Leora Circle Date: 3/12/2012

5. Attach comments/issues:

Superintendent Approval
Judith R. Joseph
11/15/2011

Whatcom County (107C250008), a Municipal Corporation and political subdivision of the State of Washington, acting through its chief executive officer, the Whatcom County Executive, with approval of the County Council.
Billing Office = Whatcom County Public Works (107C250007).

REVIEW, QUALITY ASSURANCE, APPROVAL, AND RECORDATION

1. Agency QA: [Signature] Date: 3/14/12

2. Superintendent (or Designee): [Signature] Date: 3/22/12

3. LTRO Recording: _____ Date: _____

4. LTRO Doc # of expired lease in TAAMS: _____ Date: _____

5. LTRO Date sent back to Agency coordinator _____ Date: _____

6. Agency tracking system update completed _____ Date: _____

