

**PORT OF BELLINGHAM
APPLICATION FOR VESSEL
BERTH RESERVATION AND BERTH AGREEMENT
("BERTH AGREEMENT")**

This **BERTH AGREEMENT** is entered into by and between the Contracting Party and the Port of Bellingham for the berthing and other services noted below and are subject to the terms and conditions of the General Conditions attached hereto.

				Date	
Contracting Party Name:		Contracting Party Address		Contracting Party – contact information	
Vessel	Voyage No.	LOA	ETA	ETD	
Vessel Owner/Line (Barge/Tug Company)		Berth Desired Maple Street Bulkhead			
To Load (Commodity Type and Amount)			To Discharge (Commodity Type and Amount)		
Terms of Affreightment			Terms of Affreightment		
Agency Firm			Authorized Individual		
Note: Separate submissions of this document are required when the vessel affreightment for part of the cargo differs from the terms of the affreightment for any other part of the cargo.					

Category of Port Charges	Party Responsible for Payment	Estimated Dollar Amount	For Port/Dock Operator Use
1. Dockage			
2. Wharfage			
3. Service and Facility Charge			
4. Handling			
5. Misc. (Water, Electricity, Etc.)			
6. Security Fee			
7. Other (Storage, etc.)			

Total Estimated Charges: \$ _____

- Final Charges:** The final charges will be determined based upon actual use of Port facilities and services.
- Invoice and Payment:** The Port will issue a final invoice to the Contracting Party to the address noted above after the vessel has left the Port facilities. Payment is due within thirty (30) days of the issuance of the invoice. Late payments shall be subject to a late charge of 1.5% per 30-day period for each thirty-day period or portion thereof in which the invoice remains unpaid. For uses extending past thirty (30) days the Port reserves the right to issue interim invoices for each thirty-day period of use.
- General Conditions and Special Conditions:** This Berth Agreement includes the General Conditions attached hereto. It may include Special Conditions which must be attached hereto and initialed by the Contracting Party and the Port. The undersigned represents and warrants that the General Conditions have been reviewed and accepted by Contracting Party and that the various provisions therein are integral to the overall economics of this agreement.
- Indemnifications, Release and Waiver of Industrial Insurance Immunity.** The Contracting Party hereby waives immunity under the Washington Industrial Insurance Act and by the initials below acknowledges that waiver.

Initials:

5. **Entire Agreement.** This Berth Agreement, and the C-St. Operations Manual (which includes these General Conditions and any Special Conditions), is the entire agreement between the Contracting Party and the Port.

6. **Authorized Signature and Financial Obligation.** The undersigned represents and warrants that he/she is authorized to act on behalf of the Contracting Party and that the Contracting Party accepts responsibility, on its own behalf, for payment of the port charges listed under the line items as designated.

Contracting Party Name:	(Authorized Signature)	Date
Port of Bellingham	(Authorized Signature)	Date

**PORT OF BELLINGHAM
GENERAL CONDITIONS FOR VESSEL BERTHING
INCLUDING INDEMNIFICATIONS, RELEASES AND WAIVERS**

1. Inspection of Berth: Contracting Party has inspected the wharf referred to in the Berth Agreement to which these General Conditions are attached and finds it acceptable for its intended uses. Contracting Party agrees and understands that the Port is allowing it to use the Wharf "as is" and that the Port makes no representations and does not warrant the condition, safety, usability, availability, or suitability of the Wharf for Contracting Party. Contracting Party also agrees and understands that the Port is under no obligation whatsoever to perform any maintenance, repairs, or modifications on any part of the Wharf to facilitate Contracting Party's use thereof.
2. Damage Caused By Vessel: Contracting Party shall be solely responsible for any damage caused by the vessel to Port facilities, other vessels or any other property. Without limiting the foregoing, it shall be the sole responsibility of the Contracting Party to inspect the facilities to which the vessel is moored and to ensure that adequate precautions are taken and adequate arrangements are made to prevent the vessel from damaging Port property, other vessels or other property in any weather event.
3. Maintain Wharf Condition: Contracting Party agrees to keep the Wharf in neat, clean, and as useable of condition that existed at the time use first began while being used by Contracting Party pursuant to this Berth Agreement. If any activity conducted by Contracting Party or a party acting under or through Contracting Party renders the Wharf or a portion of the Wharf unusable or unsafe, or otherwise damages the condition of the Wharf Contracting Party shall make all repairs necessary to return the Wharf to as reasonably good of condition as existed on the commencement date of this Berthing Agreement.
4. Environmental Condition: Contracting Party understands that the sediments underlying the Wharf and soils along the shoreline contain hazardous substances and are currently undergoing environmental remediation which will include capping some sediment in place and containing contaminated soils behind seawalls. Contracting Party agrees not to disturb or damage any sediment cap or seawall. If Contracting Party or a party acting under or through Contracting Party disturbs or damages any sediment cap or seawall, Contracting Party shall bear all costs associated therewith, including the cost of repairing the sediment cap.
5. Indemnification: Contracting Party hereby agrees to protect, save, defend, hold harmless and indemnify the Port, its commissioners, officers, employees, tenants and agents from any and all demands, claims, judgments, or liability for property loss or damage (including attorney's fees and costs) and/or personal injuries to the extent arising out of any of vessel, agents, employees, licensees, or invitees breach of these General Conditions or activities associated with or concerning use of the Wharf.
6. Release: Contracting Party hereby releases any and all claims against the Port due to the level of safety, usability, or suitability for Contracting Party of the Wharf. Any work done to the Wharf is done at Contracting Party sole risk. Without limiting the foregoing, Contracting Party hereby releases and discharges the Port from any claim for loss or damage to its property or cargo no matter the cause and states that Contracting Party has addressed through insurance.
7. Release - Personal Injury and Property Damage. Contracting Party hereby waives and releases all claims and demands against the Port, its employees, commissioners, agents and tenants for personal injury or property damage arising out of Contracting Party activities or presence on the Wharf. Moreover, Contracting Party hereby waives for itself and its insurance carriers any right of subrogation against the Port, its commissioners, officers, employees, tenants and agents.
8. Insurance: Contracting Party represents that it has and will at all times relevant hereto maintain appropriate insurance in an amount of not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for any injuries or property damages (including damage to Port property) that may arise while

Contracting Party, its agents, employees, licensees or invitees are performing activities or are present at or on the Wharf.

9. Waiver of Title 51 Immunity: Contracting Party hereby waives any immunity under the Washington Industrial Insurance Act Title 51 RCW or other applicable laws that would preclude a claim against Contracting Party for contribution for a claim brought against the Port its commissioners, officers, employees, tenants and agents arising from the use of the Wharf.

10. Contracting Party Information: Contracting Party shall provide the Port, in advance, the name and contact information of the tug and barge operator and methods of contacting the tug and barge operator while in transit so as to assist the Port in coordinating use of available dockage.

11. Vessel Information: The vessel agent or other person requesting reservation of a berth ("Berthing Agent") shall, as part of the berth reservation process, provide to the extent of his knowledge all information called for on the Vessel Berth Reservation and Agreement respecting the vessel, its estimated arrival and departure, amount(s) and type(s) of cargo to be loaded/discharged, and estimate of amount of each category of port charges, as enumerated, and party responsible for thereof. The submission of this form, signed by the berthing agent, shall constitute the berthing agent's attestation as to the accuracy of information therein supplied, based upon and to the extent of information made available to the berthing agent at the time of submission. Should the berthing agent, subsequent to submission of this form, receive information which materially differs from the information previously provided, and which information the agent reasonably believes is not equally known the Port, it shall immediately notify the Port and, as if requested by the Port, promptly file an amended Supplement to Application for Vessel Berth Reservation and Agreement with the Port.

12. Port Rules and Regulations: In addition to the terms for berth reservation and establishment of financial responsibility set forth herein, requests for berth reservations and assignments of berths shall otherwise be in accordance with all rules and regulations established by the Port as they now exist or are hereinafter adopted or modified.

**PORT OF BELLINGHAM
SPECIAL CONDITIONS FOR VESSEL BERTHING**

Contracting Party Name:	Vessel Name:
Berth: Maple Street Bulkhead	Date:

The following terms and conditions shall apply to the Berth Agreement

1. The Port does not represent nor warrant availability of the moorage at Maple Street Bulkhead to the Contracting Party. The Contracting Party shall consult with the Port in advance to determine the dates and times moorage at the Maple Street Bulkhead is available. The Port reserves the right to notify the Contracting Party that the Maple Street Bulkhead is not available for use and order the Contracting Party to abstain from any use of moorage at the Maple Street Bulkhead in advance of said use, or to cease and desist any use of moorage at the Maple Street Bulkhead while it is being undertaken.
2. This Berth Reservation and Berth Agreement may be terminated by either party giving at least twenty (20) days written notice of its intent to terminate.
3. Use pursuant to this Berth Reservation and Berth Agreement shall conform to and abide by all applicable rules, codes, laws regulations and Port policies.
4. The Contracting Party and their customers, contractors and any personnel associated with the authorized use, shall adhere to the following conditions and operational restrictions for the use of the, Maple Street Bulkhead, C-street Terminal and moorage system along the North side of the Whatcom Waterway:
 - a) **Vessel Operations**—Vessel operations shall be conducted to avoid grounding, prop wash or any disturbance of the seabed and the cap constructed as part of the Whatcom Waterway Cleanup Project, this includes the following restrictions:
 - a. Vessel operations shall be limited to tide and wave conditions where grounding of the vessel hull or contact of the vessel propeller with the seabed shall not occur.
 - b. Vessel operations shall not occur at tides below MLLW, or higher if necessary to avoid grounding of the vessel hull or contact of the vessel propeller with the seabed, based on NOAA Station No. 9449211.
 - c. Vessel operations shall not exceed 720 horsepower applied.
 - d. Vessel operations shall be limited to vessels that meet the following specifications: (1) a maximum draft of 11 feet, (2) maximum propeller diameter of 5.8 feet, (3) maximum of 850 horsepower, and (4) operated in accordance with a, b and c above.
 - e. If vessel operations deviate from the criteria listed above, a written Special Conditions Alternate Plan by the Contracting Party must be submitted to the Port for approval prior to authorizing the Berth Agreement. It must include the alternative vessel operations that would specifically avoid grounding, prop wash, or any disturbance of the seabed and the cap constructed as part of the Whatcom Waterway Cleanup Project.

☐ vessel operations meet the specifications provided above

☐ vessel operations do not meet the specifications provided above, see attached Special Conditions Alternative Plan.

Initials: _____

- b) **Use of Mooring Dolphins and Fender System**—The use of the dolphin and fender system, including cleats and bollards shall be done under the following operational restrictions:
 - a. The maximum lateral load upon the dolphin and fender system shall be 35 kips (1 kip = 1,000 pounds-force)
 - b. The maximum berthing speed normal to berth shall be 0.2 knots (0.35 ft/s)
 - c. The maximum 3-second gust of wind speed shall be 65mph; beyond which no vessels shall remain at berth.
 - d. The maximum pull load on cleats shall be 25 tons, not to exceed 45-degree angle.
 - e. The maximum pull load on bollards shall be 20 tons.
 - c) **Use of Waterway Permit Area**— Portions of the Whatcom Waterway, including the moorage areas at the mooring dolphins and fender system located on state-owned aquatic land managed by the Department of Natural Resources. These areas are authorized to the Port through the Waterway Permit, Permit No. 20-092231, for commercial moorage and for no other purpose. Use of these areas shall be subject to the terms and conditions of the DNR Waterway Permit, as amended or renewed, including but not limited to the following:
 - a. User shall not cause or permit:
 - i. damage to natural resources
 - ii. waste, or
 - iii. deposit of material, including fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type or other matter.
 - b. Users shall not cause or permit scour or damage to aquatic land and vegetation, which includes the following limitations:
 - i. Users shall not use or allow use of a pressure washer to clean underwater surfaces unless the water is deeper than 7 feet at the time.
 - ii. Users shall not moor or allow moorage of vessels in waters shallower than 4 feet at the extreme low tide or water. This is applicable only in portion of the C-Street Terminal as depicted on Exhibit A.
 - d) **Use of Bulkhead Areas for Crane operations**— The allowable ground loading for crane usage at the C street terminal is shown in the attached Allowable Crane Loads Diagram. The use of the C Street terminal for crane operations shall be done in accordance with the specifications and operational restrictions included therein. Prior to crane use, a certified structural engineer shall provide documentation to the Port that the crane usage will not exceed the given load ratings.
 - e) **Use of Bulkhead Areas for material storage**— The allowable loading for material storage at the C Street terminal is shown in the attached Allowable Surcharge Loads Diagram as depicted on Exhibit E. The use of the C street terminal for material shall be done in accordance with the specifications and operational restrictions included therein.
5. Contracting Party acknowledges that for purposes of Maintaining Wharf Condition as described in Section 3 of the General Conditions above, that if any activity conducted by Contracting Party or a party acting under or through Contracting Party renders the Wharf or a portion of the Wharf unusable or unsafe, or otherwise damages the condition of those portions of the Wharf that are part of the Whatcom Waterway Project, including but not limited to the Maple Street Bulkhead, C-street Terminal and moorage system along the North side of the Whatcom Waterway that are not substantially complete, the Contracting Party shall be responsible for full reimbursement to the Port for all costs of all repairs necessary to return the Wharf to as reasonably good of condition as existed on the commencement date of this Berthing Agreement.

6. Contracting Party shall immediately notify the Port if Contracting Party renders the Wharf, or a portion of the Wharf unusable or unsafe, or otherwise causes damages associated with Contracting Party's Use. For purpose of notice, the Contracting Party shall have a verbal conversation with a Port official. Contact information for Port officials are;

Primary:

Dave Warter Mobile: 360-319-0786
Jon Olson Mobile: 425-275-1960

Alternate:

During Business Hours: Office 360-676-2500
After Business Hours: 24-hour emergency contact: 360-739-1944

7. Contracting Party acknowledges that for purposes of Indemnification and Release in Sections 5, 6 and 7 of the General Conditions above, Indemnification and Release includes the Port's Contractors and/or their Subcontractors that have been contracted to perform work on the site.

Contracting Party Name:	(Authorized Signature)	Date
Port of Bellingham:	(Authorized Signature)	Date