

MEMORANDUM OF AGREEMENT

AMONG

THE U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT,

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,

AND

THE CITY OF SNOQUALMIE

Regarding Treatment of Adverse Effects Associated with the Tokul Road Roundabout Project,  
King County, Washington

WHEREAS, U.S. Army Corps of Engineers, Seattle District Regulatory Branch (Corps) received a Department of the Army (DA) permit application (DA Permit No. NWS-2006-871) from the City of Snoqualmie (City) associated with construction of a new roundabout at the intersections of State Route 202, Tokul Road, and Mill Pond Road, King County Washington (“the Project”); and

WHEREAS, the Corps' issuance of such a permit for the Project is subject to review under Section 106 of the National Historic Preservation Act, 16 U.S.C. (NHPA), and its implementing regulations; and

WHEREAS, the area of potential effects (APE) consists of two separate locations: The State Route 202, Tokul Road, and Mill Pond Road roundabout construction project locations (Project location) and a wetland mitigation area (Mitigation location); and

WHEREAS, the Project and Mitigation locations are on lands owned by the City; and

WHEREAS, two reports were prepared documenting efforts to identify historic properties that would be potentially affected by the permitted activities, titled: 1. *Cultural Resources Assessment for the SR 202/Tokul Road Improvement Project, King County, Washington* dated February 27, 2008 (for the Project location) and 2. *Cultural Resource Assessment of the SR202-Tokul Road Roundabout Wetland Mitigation King County, Washington* dated June 10, 2008 (for the Mitigation location), and are included as if attached and incorporated by this reference. No historic properties within either APE were identified during these assessments; and

WHEREAS, by letter dated December 11, 2012, the Snoqualmie Indian Tribe (Tribe) wrote the Corps to express the Tribe's concern about the Project and its potential effects on the Tribe's Traditional Cultural Property (TCP) located at Snoqualmie Falls. The Tribe's letter requested formal National Historic Preservation Act (NHPA) consultation under Section 106; and

WHEREAS, by letter dated February 13, 2013, the Corps suspended NWP coverage for the Project pending completion of the Section 106 consultation with the affected tribes; and

WHEREAS, the Corps has engaged in consultation, beginning in 2013, with the Snoqualmie Indian Tribe, for which the Snoqualmie Falls has religious and cultural significance, and with the

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Muckleshoot Indian Tribe, who have ancestral cultural heritage interests in Snoqualmie Falls; and

WHEREAS the Muckleshoot Indian Tribe has ancestral cultural heritage interests in Snoqualmie Falls and is owner of the Salish Lodge at the Falls; has been engaged in consultation regarding the Tokul Road Roundabout Project since project inception; and

WHEREAS, the Snoqualmie Indian Tribe considers Snoqualmie Falls a sacred site central to the Tribes' identity; and

WHEREAS, one of the most important qualities and an integral part of the cultural experience of the Snoqualmie Indian Tribe is the natural setting that surrounds the spiritual sanctity of Snoqualmie Falls; and

WHEREAS, the Snoqualmie Indian Tribe has stated the current National Register of Historic Places Registration Form does not adequately document the Snoqualmie Falls TCP. The Tribe has further stated the current National Register Nomination Form and TCP boundaries shown thereon fail to reflect the importance and cultural significance of the site to the Tribe. The Tribe asked the Corps to reopen its 106 consultation to consider the potential effects to the TCP; and

WHEREAS, the Corps has determined that a historic property listed on the National Register of Historic Places (NRHP), the Snoqualmie Falls Traditional Cultural Property, is located within the vicinity of the Project location; and

WHEREAS, the Snoqualmie Indian Tribe considers that anything diminishing the natural environment of the Snoqualmie Falls and the surrounding view shed diminishes the integrity of the Fall's setting and its religious and cultural feeling and association for the Tribe. Based on the Corps' understanding of the significance of the Snoqualmie Falls to the Snoqualmie Indian Tribe, and the nature of the permitted activities, the Corps has determined that the construction of the Tokul Road Roundabout will adversely affect the integrity of the Snoqualmie Falls TCP; and

WHEREAS, the City of Snoqualmie recognizes the aesthetic and cultural significance of Snoqualmie Falls in its Comprehensive Plan in Section H.7, and has established policies to protect the natural and rugged beauty of the area, including requiring the preservation of significant trees (2.H.7.1), requiring future development to be sensitive to topography in roadway design and development (2.H.7.2), preserving the Snoqualmie Falls view shed using existing natural topography as a primary protection measure (2.H.7.3), consideration of creation of additional view sheds in the Snoqualmie Falls Neighborhood as defined in the Plan (2.H.7.4) and ensuring that future development takes significant and profound steps to minimize both the physical and visual environmental impacts (2.H.7.5); and

WHEREAS, the Corps has consulted with the Washington State Department of Archaeology and Historic Preservation (DAHP) and they concur with the Corps' determination of adverse effects; and

WHEREAS in accordance with 36 CFR Section 800.6(a)(1), Corps has notified the Advisory Council on Historic Preservation (Council) of its adverse effect determination and the Council

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has chosen to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

WHEREAS, pursuant to 36 CFR Part 800.6(a)(2), and because of their role as the applicant for the DA permit, the Corps has invited the City to sign this Memorandum of Agreement (MOA) as an invited signatory; and

WHEREAS, pursuant to 36 CFR Part 800.6(a)(2), and based on their stated interests as noted above, the Corps has invited Snoqualmie Indian Tribe and the Muckleshoot Indian Tribe to sign this MOA as concurring parties; and,

WHEREAS, the Snoqualmie Indian Tribe advised the Corps by letter of January 23, 2015, that it “will continue to oppose any project that will disturb, desecrate or otherwise impair the integrity of the tangible and intangible characteristics of the area. The Tribe’s deep cultural and spiritual rights in Snoqualmie Falls are not sale”. Further the Tribe advised the Corps it will not be a concurring party to this MOA; and,

WHEREAS, the DAHP determined “it is in the best interest of the state not to sign the MOA at this time” which the ACHP considers termination of Section 106 consultation pursuant to 36 CFR Section 800.7(a)(2); and,

WHEREAS, the ACHP and the Corps consulted regarding the SHPO's termination, and agreed that they would execute the MOA without the SHPO's involvement since the mitigation measures outlined in Appendix A evidence good faith consultation on the part of the Corps as defined in 36 CFR 800.2 and is responsive to the requests made by the Snoqualmie Indian Tribe.

NOW, THEREFORE, the Corps, Council, and City (collectively the “Parties” and individually the “Party”) agree that should the Project move forward to construction, that the following stipulations resolve the adverse effects to historic properties associated with the Project, and that these stipulations shall govern the Project and all of its parts unless this MOA expires or is terminated.

#### STIPULATIONS

The Corps, in coordination with the City, shall ensure that the following stipulations are implemented and that the Corps incorporates them as permit conditions when verifying the permit:

1. The City will implement the stipulations in Appendix A of this MOA should the Snoqualmie Indian Tribe notify the Corps in writing of its agreement in participating with the mitigation measures set forth in the MOA within six months of the execution of this MOA.
2. If, at the end of the six months specified above, the Snoqualmie Indian Tribe has not notified the Corps in writing of its interest in participating in the mitigation measures set forth in Appendix A, the City shall pay the funds specified in Appendix A into the Washington State

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Skeletal Human Remains Assistance Account authorized by RCW 43.334.077, and will so notify the Parties by email prior to taking this action, and upon completion. The City will have 60 days, after the end of the six month period specified above, to complete the transfer of funds.

3. Post-Review Discoveries

a. *Discovery of Human Remains*

If human remains are discovered at any time during construction, work will cease in the discovery vicinity and the location will be secured. Procedural requirements for the discovery of human remains are detailed in Appendix A. The treatment of human remains shall meet state and federal laws and regulations.

b. *Inadvertent Discovery*

Inadvertent discovery of archaeological material and historic properties will be treated following regulations found at 36 CFR 800.13 and in the Corps' permit conditions.

4. Administrative Stipulations

a. *Dispute Resolution*

Should any party to this agreement object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with the objecting party(ies) to resolve the objection. If Corps determines, within 30 days, that such objection(s) cannot be resolved, Corps will:

- i. Forward all documentation relevant to the dispute to the Council. Upon receipt of adequate documentation, the Council shall review and advise the Corps on the resolution of the objection within 30 days. Any comment provided by the Council, and all comments from the parties to the MOA, will be taken into account by the Corps in reaching a final decision regarding the dispute.
- ii. If the Council does not provide comments regarding the dispute within 30 days after receipt of adequate documentation, the Corps may render a decision regarding the dispute. In reaching its decision, the Corps will take into account all comments regarding the dispute from the consulting parties to the MOA.
- iii. The Corps' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged. The Corps will notify all parties to this agreement of its decision in writing before implementing that portion of the Undertaking subject to dispute under this stipulation. The Corps' decision will be final.

b. *Amendments and Noncompliance*

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If any Party to this MOA determines that its terms will not or cannot be carried out or that an amendment to its terms must be made, that Party shall immediately consult with the other Parties to develop an amendment to this MOA pursuant to 36 CFR Part 800.6(c)(7) and Part 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the original signatories is filed with the Council. If the Parties cannot agree to appropriate terms to amend the MOA, any Party may terminate the agreement in accordance with Stipulation 6.f., below.

c. *Plan Enforceability*

Any plan developed as a requirement of this MOA is subject to the laws that enforce this MOA.

d. *Primary Contact Information*

The contact information for each signatory to this MOA may be updated which shall not be considered an amendment to this MOA. An electronic message (email) exchanged among the contacts, indicating the updated information, shall be sufficient provided the signature authority for each Party is included in such communication

e. *Duration*

If the terms of this agreement have not been implemented within five years of execution of the MOA, this agreement expires, unless the Parties agree in writing to an extension for carrying out its terms. If this agreement expires, the Corps shall notify the parties to this agreement, and if City chooses, and the Corps does not object to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

f. *Termination*

If an MOA is not amended following the consultation set out in Stipulation 4b., it may be terminated by any signatory or invited signatory. Within 30 days following termination, the Corps shall notify the signatories if it will initiate consultation to execute an MOA with the signatories under 36 CFR §800.6(c)(1) or request the comments of the Council under 36 CFR §800.7(a) and proceed accordingly.

Execution of this Memorandum of Agreement by the Corps, Council, and the City of Snoqualmie, the submission of documentation and filing of this Memorandum of Agreement with the Council pursuant to 36 CFR Section 800.6(b)(1)(iv) prior to the Corps approval of this Undertaking, and implementation of its terms constitutes evidence that the Corps has taken into account the effects of this Undertaking on historic properties and afforded the Council and other signatory and concurring parties listed below an opportunity to comment.

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SIGNATORY PARTY:

U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_

John G. Buck  
Colonel, Corps of Engineers  
District Commander

Contact Information:

Chris Jenkins  
Regulatory Branch Cultural Resources Program Manager  
US Army Corps of Engineers, Seattle District  
P.O. Box 3755  
Seattle WA 98124  
(206) 764-6941  
Paul.C.Jenkins @usace.army.mil

Note: Signatures continued on next page.

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SIGNATORY PARTY:

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler Date: 1/29/15

Title: \_\_\_\_\_  
John M. Fowler.  
Executive director

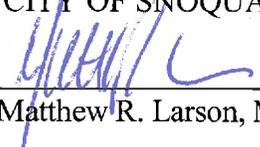
Contact Information:  
Reid Nelson  
Director  
Office of Federal Agency Programs  
Advisory Council on Historic Preservation  
401 F Street NW, Suite 308  
Washington, DC 20001-2637  
(202) 517-0200  
rnelson@achp.gov

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INVITED SIGNATORY PARTY:

THE CITY OF SNOQUALMIE

By:   
Matthew R. Larson, Mayor

Date: January 29, 2015

Contact Information:

Matthew R. Larson  
Mayor  
City of Snoqualmie  
P.O. Box 987  
Snoqualmie, WA 98065  
(425) 888-1555  
mayor@ci.snoqualmie.wa.us

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CONCURRING PARTY:

MUCKLESHOOT INDIAN TRIBE

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

Virginia Cross  
Tribal Council Chairperson

Contact Information:

Laura D. Weeks  
Office of the Tribal Attorney  
Muckleshoot Indian Tribe  
39015 172nd Ave. SE  
Auburn, WA 98092-9763  
(253) 876-3365  
Laura.Weeks@muckleshoot.nsn.us

Note: End of signature pages.

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**Appendix A Mitigation Stipulations to MOA Regarding Treatment of Adverse Effects Associated with the Tokul Road Roundabout Project, Seattle, King County, Washington (DA Permit No. NWS-2006-871)**

1. Landscape Restoration

The City, in consultation with the Snoqualmie Indian Tribe, and in accordance with permit conditions established by the Corps, will prepare, and implement a Landscape Restoration Plan to restore the abandoned portions of State Route 202, Tokul Road, and Mill Pond roads to emphasize its natural setting. The plan shall also provide for landscaping at the roundabout location to minimize the adverse effects to the natural setting.

2. Additional Mitigation

No later than sixty (60) days after the Snoqualmie Indian Tribe notifies the Corps in writing of its interest in participating with the mitigation measures set forth in the MOA and construction has begun, the City shall fund \$50,000 in an account for the exclusive use of the Snoqualmie Indian Tribe, for the purpose of funding Tribal projects related to furthering the study, education, outreach, and/or cultural heritage of the Snoqualmie Falls Area.

- a. The City shall release funds to the Snoqualmie Indian Tribe upon receipt of letter or email notification from the Snoqualmie Indian Tribe specifying the proposed work and the requested funding for such work. The City shall forward a copy of any such requests to the Parties. If the work for which funds are requested qualifies under Stipulation 2 above, and the requested amount is within the amount remaining in the fund, the City will release the requested funds within 30 days of receipt of the request. The City will notify the Parties by email upon completion of the funds transfer. The Corps will serve as final arbiter if there is any question as to whether a project qualifies for funding.
- b. If monies remain in the account two years after the work in Stipulation 2 above starts, the City shall pay the remaining amount into the Washington State Skeletal Human Remains Assistance Account authorized by RCW 43.334.077, and will so notify the Parties by email prior to taking this action, and upon completion. The City will have 60 days, after the second anniversary of the start of construction, to complete the transfer of funds.

3. Public and Tribal Outreach

The City shall bear the expense for public and Tribal outreach and will allocate in-kind City staff or outside professional services in an amount not to exceed Ten Thousand Dollars (\$10,000) for this purpose. Outreach activities will include:

- a. Conducting two Town Hall meetings on dates coordinated with the Snoqualmie Indian Tribe, to be held no later than one (1) year following completion of Project construction. The meetings will be advertised through press releases, the City's email lists, posting in customary locations for public notices, and on the City's Facebook and website. The first Town Hall meeting will address the importance of Snoqualmie Falls to the Snoqualmie Indian Tribe. The second Town Hall meeting will address the significance of Snoqualmie Falls through prehistory and history. Snoqualmie Tribal members, the

consulting parties and other interest parties shall be invited to participate at both meetings.

- b. Hosting a webpage on the City website addressing the relationship of the Snoqualmie Tribe to Snoqualmie Falls. The City shall invite the Snoqualmie Indian Tribe to assist in the development of the content for the webpage, as appropriate. The City will seek to have other local websites link to the City's webpage, including the Snoqualmie Valley Historical Museum and the Northwest Railway Museum to reach as broad an audience as possible.
- c. The Snoqualmie Indian Tribe, DAHP, and the ACHP have requested better long-term communication and planning between the Snoqualmie Indian Tribe and the City. The City is currently updating their Comprehensive Plan, which addresses long-term development (see <http://www.ci.snoqualmie.wa.us/Departments/Planning/ComprehensivePlan.aspx>). Within 60 days of execution of the MOA, the City will host at least one meeting with the Snoqualmie Indian Tribe at a mutually agreeable location and at a mutually convenient date and time to consider comments from the Tribe on the Snoqualmie Vicinity Comprehensive Plan, in particular policies under Section 2.D., "Encourage respect for, and take action to preserve historic and cultural resources located within the City and its urban growth area" and Section H.7., "Snoqualmie Falls". Additional meetings may be scheduled as needed. The City will email signatories and concurring parties the outcome of any meeting within two weeks of completion of the meeting(s).

#### 4. Reporting

The City shall provide a yearly progress report, for a period of at least five years following the execution of this agreement, to the Signatories and Concurring on the obligations outlined in this document. The report shall include, but not be limited to, a status report on progress of public and tribal outreach, an evaluation of the effectiveness of the public and tribal outreach to increase awareness of the importance and significance of Snoqualmie Falls, and on the City's efforts to engage the Snoqualmie Indian Tribe, Muckleshoot Indian Tribe, and any other tribes with an interest in the Snoqualmie Falls.

**Appendix B to MOA Regarding Treatment of Adverse Effects Associated with the Tokul Road Roundabout Project, Seattle, King County, Washington (DA Permit No. NWS-2006-871)**

**Procedures for the Discovery of Human Skeletal Remains**

This appendix outlines procedures to follow, in accordance with state and federal laws, if human remains are discovered. These procedures will be implemented at all times in the event of such discoveries.

This plan is intended to provide guidance to City personnel and their contractors so they can comply with applicable federal and state laws and regulations, including Section 106 of the NHPA (36 Code of Federal Regulations 800); State Environmental Policy Act (SEPA); Chapter 173-802 Washington Administrative Code (WAC); Chapter 173-806 WAC; Chapter 197-11 WAC; Title 27 Revised Codes of Washington (RCW) 27.44, Indian Graves and Records, Chapter 27.53, Archaeological Sites and Resources; and Title 68, Chapter 60.050, Protection of Historic Graves.

This plan provides direction and guidance to City and project personnel for the proper procedures to be followed should a discovery occur and provides contact information for designated parties.

A copy of this plan will be provided to all contractors or any other personnel who will be working within the site boundary and will be discussed by a professional archaeologist at a pre-construction meeting prior to commencement of any ground-disturbing activities.

The City recognizes that discovery of human remains and related objects are always a possibility during ground disturbance. If human remains are encountered, they will be treated with dignity and respect at all times. It is further acknowledged that the concerned Native American Tribes are extremely sensitive about ancestral burials, and that the remains must be treated confidentially and respectfully.

If the remains are determined to be non-forensic, treatment and repatriation will be determined by applicable laws and in consultation among signatories and concurring parties to the MOA.

**Discovery Procedures**

Step 1: Stop work.

If any City employee, contractor, subcontractor, or tribal monitor believes that he or she has uncovered human remains at any point in the project, all work adjacent to the discovery must stop and an area large enough to ensure the security, protection, and integrity of the discovery shall be cordoned off.

The discovery location shall be secured at all times.

Vehicles, equipment, and unauthorized personnel will not be permitted to traverse the discovery location.

The remains shall be covered with a tarp or other materials (not soil or rocks) for temporary protection in place and to shield them from being photographed. The remains shall not be touched, moved, or further disturbed.

No further excavation shall be undertaken within 30 meters (100 feet) of the discovery until authorized by DAHP and the Corps.

No one shall call 911 or speak with the media.

Step 2: Notify on-site monitor or designated archaeological consultant.

The monitor or designated archaeological consultant shall ensure that the on-site measures are implemented.

Step 3: Notify City of Snoqualmie Project Manager for Tokul Road Roundabout Project

Name: Kamal Mahmoud  
Number: (425) 888-1555  
Email kmahmoud@ci.snoqualmie.wa.us

The City's project manager is responsible for taking appropriate steps to protect the discovery site.

The City's project manager or his designated archaeological consultant shall make all other calls and notifications.

The Snoqualmie Police Department and King County Medical Examiner will be contacted immediately following the provisions of RCW68.60.055. In addition, the Washington State Physical Anthropologist at DAHP and the Corps will be notified.

The City shall also make courtesy notification to Snoqualmie Indian Tribe and Muckleshoot Indian Tribe.

### **Contact Information**

City of Snoqualmie Police Department:

Steve McCulley, Chief  
Snoqualmie Police Department  
34825 SE Douglas St.  
Snoqualmie, WA 98065  
(425) 888-3333  
smcculley@ci.snoqualmie.wa.us

King County Medical Examiner's Office: 206-731-3232

U.S. Army Corps of Engineers

Name: Chris Jenkins

Title: Regulatory Cultural Resources Program Manager

Number: 206-764-6941

Email: [Paul.C.Jenkins@usace.army.mil](mailto:Paul.C.Jenkins@usace.army.mil)

Department of Archaeology and Historic Preservation

Name: Dr. Guy Tasa

Title: State Historic Preservation Officer

Phone Number: 360-586-3534

Email: [Guy.Tasa@dahp.wa.gov](mailto:Guy.Tasa@dahp.wa.gov)

Tribe: Snoqualmie Indian Tribe

Name: Steven Mullen-Moses

Title: Director, Archaeology

Number: 425-888-6551

Email: [steve@snoqualmietribe.us](mailto:steve@snoqualmietribe.us)

Tribe Muckleshoot Indian Tribe

Name: Laura R. Murphy

Title: Archaeologist Muckleshoot Indian Tribe

Number:

(253) 876-3272

Email: [laura.murphy@muckleshoot.nsn.us](mailto:laura.murphy@muckleshoot.nsn.us)