#### MEMORANDUM OF AGREEMENT

#### **AMONG**

THE U.S. ARMY CORPS OF ENGINEERS,
THE FEDERAL HIGHWAY ADMINISTRATION,

THE WASHINGTON STATE DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION,

THE CITY OF REDMOND, AND

THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

REGARDING TREATMENT OF ADVERSE EFFECTS TO THE BEAR CREEK SITE (45K1839), REDMOND, KING COUNTY, WASHINGTON

- 1. 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-2009-0242) from the City of Redmond (Redmond) for a fisheries habitat restoration project located at the lower reach of Bear Creek just south of the Redmond Town Center, T25N, R5E, sec12, W.M., Bellevue North USGS 7.5' quadrangle, King County, Washington (the "Project"); and
- 2. 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 (36 CFR Part 800 and 33 CFR 325, Appendix C); and
- 3. WHEREAS, prior to seeking a Corps permit Redmond contracted with Northwest Archaeological Associates, Inc (now SWCA) to conduct a cultural resources assessment of the Project area, as reported in the January 9, 2009 report titled *Cultural Resources Assessment for the Lower Bear Creek Rehabilitation Project, King County, Washington*, included as if attached hereto and incorporated by this reference, and as a result of its assessment SWCA recorded the Bear Creek archaeological site (Site No. 45K1839); and
- 4. WHEREAS, prior to seeking a Corps permit Redmond contracted with SWCA to conduct large-scale archaeological testing at the Bear Creek Project site under Washington State Archaeological Excavation Permit 09-11. The testing included stripping of approximately one meter of sterile overburden, excavation of 150 meters of backhoe trenches and archaeological excavation of 43.86 cubic meters of sediment, and identified a highly significant 10,000 year old site as reported in the January 6, 2010 report titled *Results of Testing at the Bear Creek Site*, 45-KI-839, Redmond, King County, Washington, included as if attached and incorporated by this reference; and
- 5. WHEREAS, after test excavation Redmond applied for a DA permit, and upon review of the work completed associated with the Undertaking, the Corps requested that Redmond halt all

ground disturbance associated with the Undertaking until the Section 106 process could be completed; and

- 6. WHEREAS, the Corps established the Undertaking's permit area and the Area of Potential Effect (APE) as all areas of project-related ground-disturbing activities plus access and staging areas associated with the DA permit; and
- 7. WHEREAS, based on the results of survey and testing, the Corps determined that the Bear Creek site is eligible for listing in the National Register of Historic Places (NRHP) for its demonstrated information potential, and the Washington State Department of Archaeology & Historic Preservation (DAHP) also known as the Washington State Historic Preservation Officer (SHPO) concurs with this determination; and
- 8. WHEREAS, the Corps notified the Chehalis Tribe, the Cowlitz Indian Tribe, the Lower Elwha Klallam Tribe, the Lummi Nation, the Muckleshoot Indian Tribe (Muckleshoot), the Nisqually Tribe, the Nooksack Tribe, the Port Gamble S'Klallam Tribe, the Puyallup Tribe, the Samish Tribe (Samish), the Sauk-Suiattle Indian Tribe, the Skokomish Tribe, the Snoqualmie Indian Tribe (Snoqualmie), the Squaxin Island Tribe, the Stillaguamish Tribe (Stillaguamish), the Suquamish Tribe, the Swinomish Indian Tribal Community, the Tulalip Tribes (Tulalip), the Upper Skagit Indian Tribes, and the Yakama Nation of the Project and asked each Tribe whether they would like to participate in this process, and
- 9. WHEREAS, the Samish have asked to be kept informed about the project and Muckleshoot, Snoqualmie, Stillaguamish, and Tulalip have asked to participate as consulting parties in the Section 106 process; and
- 10. WHEREAS, pursuant to an Agreement with the City of Redmond (GCA 5854), Washington State Department of Transportation (WSDOT) will be providing a lump sum amount of funding for the Bear Creek Restoration Project, and in exchange will receive credit for aquatic habitat mitigation for the SR 520, I-5 to Medina Project, a federal undertaking for which the Federal Highway Administration (FHWA) is the lead agency; and
- 11. WHEREAS, for the purpose of Section 106, the FHWA has acknowledged the Corps as the lead federal agency for the Bear Creek Restoration Project; and
- 12. WHEREAS, the King County Historic Preservation Program (KCHPP) has requested consulting party status as an interested public entity; and
- 13. 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 with specified documentation and the Council has chosen not to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and
- 14. WHEREAS, the Corps held a meeting on August 24, 2011 to solicit Public, Tribal, and consulting party comments on ways to avoid, minimize, and mitigate adverse effects to the Bear

Creek Site, and has allowed the Public, Tribes, and consulting parties the opportunity to comment on these issues through various forums, and

- 15. WHEREAS, Redmond has determined that portions of the Bear Creek site can be preserved in place, and based on Corps and consulting party review, Redmond has modified their proposed construction to minimize effects to the Bear Creek site, as shown in the final drawings under modified Alternate 2A in a letter to the Corps dated April 12, 2012, and as finalized in the Corps permit (NWS-2009-0242) for this project, included as if attached and incorporated by this reference; and
- 16. WHEREAS, the revised construction will result in an adverse effect to the Bear Creek site, removing approximately 40 percent of the known site area; and
- 17. WHEREAS, the Corps has consulted with DAHP, Redmond, Muckleshoot, Snoqualmie, Stillaguamish, Tulalip, WSDOT, FHWA, and KCHPP in accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470 (NHPA), to receive input on for resolving adverse effects of the undertaking on the Bear Creek Project site; and
- 18. WHEREAS, pursuant to 36 CFR Part 800.6(c)(2), the FHWA has asked to sign this MOA as a signatory, and the Corps granted this request; and
- 19. WHEREAS, pursuant to 36 CFR Part 800.6(c)(2), and because of their role as the applicant for the DA permit, the Corps has invited Redmond to sign this Memorandum of Agreement (MOA) as a signatory; and
- 20. WHEREAS, pursuant to 36 CFR Part 800.6(c)(2), and because of their role as the funding agency, the WSDOT has asked to sign this MOA as a signatory, and the Corps granted this request; and
- 21. WHEREAS, pursuant to 36 CFR Part 800.6(c)(3), and based on their stated interest, the Corps has invited Muckleshoot, Snoqualmic, Stillaguamish, Tulalip, and KCHPP to sign this MOA as concurring parties;

NOW, THEREFORE, the Corps, FHWA, DAHP, Redmond, and WSDOT (collectively the "Parties" and individually the "Party") agree that should the Undertaking move forward to construction, that the following Corps-enforced stipulations resolve adverse effects to historic properties associated with the Undertaking, and that these stipulations shall govern the Project and all of its parts unless this MOA expires or is terminated.

#### **STIPULATIONS**

The Corps shall ensure that the following stipulations are implemented:

1. <u>Cultural Resource mitigation plan</u>. Redmond will adhere to the site mitigation plan (Plan) dated February 27, 2013 and titled "Cultural Resources Mitigation Plan for the City of Redmond's Bear Creek Restoration Project", included as attached hereto and incorporated by

this reference. The Plan can be implemented by any entity that demonstrates they meet federal and state standards for conducting archaeological investigations and are capable of conducting the work in the Plan to the Parties' satisfaction.

In addition to the requirements detailed in the Plan, Redmond will adhere to the following:

- a. Workforce Education. Redmond will educate the workforce prior to initiation of any construction associated with the Bear Creek restoration project with the goal of avoiding inadvertent damage to site 45KI839. Education will apply to all Redmond employees, contractors, and subcontractors working within the project APE that are conducting work that has the potential to adversely affect the site for tasks related to this MOA.
- b. <u>Public and Tribal Outreach</u>. Redmond shall bear the expense for public and Tribal outreach as detailed in the Plan and will allocate \$100,000 for this purpose. Outreach activities include sponsorship of a cultural resource workshop, public talks on the archaeology of the site and the history of the larger cultural area, development of a webpage with photo/video documentation of the site and larger cultural area, creation of a hand-carved Tribal art piece, installation of interpretative signs, and development of education curriculum materials.
- c. <u>Site Preservation and Post Construction Monitoring</u>. Redmond shall bear the expense for site preservation and post construction monitoring as detailed in the Plan and will allocate \$50,000 for this purpose.
- d. <u>Curation</u>. Redmond will curate in perpetuity all artifacts, samples, records, and other relevant materials from the Bear Creek excavations at a single facility that meets or exceeds federal curation standards as described in 36 CFR 79 and that provides reasonable access to the collection consistent with 36 CFR 79. Requirements for curation are detailed in Appendix A of this agreement.
- e. <u>Discovery of Human Remains</u>. If human remains are discovered at any time during the data recovery excavation or 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 C of the mitigation plan. The treatment of human remains will meet state and federal laws and regulations.
- 2. <u>Tribal Access, Monitoring, and Notification.</u> Redmond will facilitate tribal access for any interested tribe during data recovery excavations, during construction of the Project, and during post construction monitoring. Redmond will notify consulting tribes at the staff level at least one week prior to any ground disturbing activity at site 45K1839, and will provide reasonable access for tribal involvement of any ground-disturbing activity that could affect intact portions of the site.

3. Reporting. For any report produced under this MOA, Redmond will provide Signatories and Concurring parties a draft version of the electronic copy to review. Redmond will revise the draft electronic copy in consideration of the comments. After final approval by the Parties, Redmond will provide Signatories and Concurring parties to this MOA two hard copies and one electronic copy of any final report Redmond prepares as required under this MOA. In addition, Redmond will provide the Corps 10 hard copies and 10 electronic copies of any final report or volume. The electronic copy will include the report as well as copies of field notes, pictures of the excavation, photo logs, pictures of artifacts with associated logs, and raw data from any analysis. For the lithic artifact analysis, the electronic version will include a Microsoft Excel file that contains unique attribute information (i.e., each artifact will be on its own row in the Excel spreadsheet).

# 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:

- Forward all documentation relevant to the dispute to the Council in accordance with 36 CFR Section 800.2(b)(2). 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 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 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

If any signatory to this MOA, including any invited signatory, 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 §§800.6(c)(7) and 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 signatories cannot agree to appropriate terms to amend the MOA, any signatory may terminate the agreement in accordance with Stipulation 4e, below.

## c. 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

#### d. Duration

If the terms of this agreement have not been implemented within ten years of execution of the MOA, this agreement shall be considered null and void, unless the signatories agree in writing to an extension for carrying out its terms. If this agreement is considered null and void, the Corps shall so notify the parties to this agreement, and if Redmond chooses to continue with the undertaking, shall re-initiate review of the undertaking in accordance with 36 CFR Part 800.

#### e. 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, FHWA, DAHP, Redmond, and WSDOT, 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 evidence that the Corps has taken into account the effects of this undertaking on historic properties and afforded the Council an opportunity to comment.

Date: 4 JUN 20 13

### SIGNATORY PARTY:

U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT

Colonel, Corps of Engineers

District Commander

## Contact Information:

Chris Jenkins, Regulatory Cultural Resources Program Manager US Army Corps of Engineers, Seattle District P.O. Box 3755
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(206) 764-6941
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#### SIGNATORY PARTY:

THE FEDERAL HIGHWAY ADMINISTRATION

By: Daniel M. Mathio Date: 02/28/2013

Title: FHWA - Washington Division Administrator

Daniel M. Mathis Division Administrator

Contact Information:

Sharon Love
Washington Division
Federal Highway Administration
711 Capitol Way, Suite 501
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### SIGNATORY PARTY:

THE WASHINGTON STATE DEPARMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION

Ву:

Title: Vicetor /SAPO

Allyson Brooks, Ph. D.

State Historic Preservation Officer

#### Contact Information:

Matthew Sterner, M.A.
Transportation Archaeologist
Department of Archaeology and Historic Preservation
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## SIGNATORY PARTY:

THE CITY OF REDMOND

Bv·	J. Marchine	Date:	March 7, 2013
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Contact Information:

John Marchione

Mayor

Michael Haley, P.E. Senior Project Manager Public Works City of Redmond 425-556-2843 mhaley@redmond.gov

## SIGNATORY PARTY:

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: July Worldith	Date: $3/11/3$	_
Title		

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Julie Meredith, P. E. SR520 Program Director

## Contact Information:

Steve Archer Cultural Resources Specialist WSDOT ESO Mega Projects 999 3rd Avenue, Suite 2424 Seattle, WA 98104 (206) 805-2895 (office) (206) 714-4681 (cell) archers@wsdot.wa.gov

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Designated by WSDOT as Agreement Number GCB 1394.

### CONCURRING PARTY:

MUCKLESHOOT INDIAN TRIBE

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

Date: May 6, 2013

Title:

Virginia CrossMIKe Jerny. SR.

Tribal Council Chairperson

VILE

Contact Information:

Laura R. Murphy
Archaeologist
Muckleshoot Indian Tribe
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Auburn, WA 98092-9763
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## CONCURRING PARTY:

SNOQUALMIE INDIAN TRIBE

By: Corrolyn Luberiau

Date:  $\frac{5/20/2013}{}$ 

Title: Carolyn Luberau

Carolyn Lubenau~

Chair, Snoqualmie Indian Tribe

#### Contact Information:

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Director Archaeology & Historic Preservation
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## CONCURRING PARTY:

STILLAGUAMISH TRIBE

By:

Date

ate: <u>3/7/2</u>

Title: \_\_\_\_\_ Shawn Yanity

Chair, Stillaguamish Tribe of Indians

Contact Information:

Kerry Lyste Cultural Resources GIS Analyst/ Database Administrator Stillaguamish Tribe of Indians 360-652-7362 ext 226 klyste@stillaguamish.com

### CONCURRING PARTY:

TULALIP TRIBES

Tulalist To 100 Chairman Date: July

Mel Sheldon, Jr. Chair, Tulalip Tribes

Contact Information:

Richard Young Hibulb Cultural Center & Natural History Preserve 6410 23rd Avenue, N.E. Tulalip, WA 98271 ryoung@tulaliptribes.nsn.gov (360) 716-2652 (425) 239-0182 - Message

# CONCURRING PARTY:

KING COUNTY HISTORIC PRESERVATION PROGRAM

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

Date:

3/14/13

Title

Preservation Officer

Contact Information:

Philippe D. LeTourneau, PhD
Archaeologist
King County Historic Preservation Program
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201 South Jackson Street, Suite 700 [MS: KSC-NR-0700]
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Note: End of signature pages.

## **Appendix A:** Requirements for Curation

Following are the requirements for museum curation for the Bear Creek Site (45KI839):

- (1) Redmond will curate in perpetuity artifacts, samples, records, and other relevant materials from the Bear Creek excavations undertaken by Redmond (survey, testing, and any work completed under this MOA) at a single facility that meets or exceeds federal curation standards as described in 36 CFR 79 and that provides reasonable access to the collection consistent with 36 CFR 79.
- (2) Redmond will consult with the Muckleshoot Tribe, Snoqualmie Indian Tribe, Tulalip Tribes, and Stillaguamish Tribe of Indians regarding curation of the Bear Creek materials at the Muckleshoot museum facility. If feasible and practicable for both parties and in consideration of Appendix A (1), Redmond will curate the materials at the Muckleshoot facility.
- (3) If, after six months of execution of this MOA, no decision has been finalized on use of the Muckleshoot curation facility, the curation facility will default to the Burke Museum. Redmond will so notify the Corps and the Muckleshoot Tribe. The Corps will consider a time extension on this requirement if so requested in writing by either party.
- (4) Redmond will curate all artifacts and records detailed in Appendix A (1) at the facility selected in Appendix A(3) within six months of final acceptance of any report prepared per Stipulation 3 of the MOA.
- (5) Redmond will document the name of the curation facility in the final data recovery report and in the site form such that future researchers can locate the materials.