

FISH BARRIER CULVERT REMEDIATION PROJECT MEMORANDUM OF AGREEMENT

Between
Lummi Natural Resources Department, Nooksack Indian Tribe Natural Resources
Department,
City of Bellingham, and the Washington Department of Fish and Wildlife

PREAMBLE:

The City of Bellingham has the legal right and legal obligation to design, to construct, and to maintain a road network, including culverts and other passageways over streams, for its residents. The Nooksack Indian Tribe and the Lummi Nation assert that they have federal reserved water rights in the Nooksack River basin, including the right to instream flows for fisheries purposes. This Memorandum of Agreement is intended solely to address remediation of fish passage that may be blocked or partially blocked by culverts owned by the City of Bellingham.

PURPOSE:

The purpose of this Memorandum of Agreement is to prioritize and create a schedule for remediating culverts owned by the City of Bellingham that block or that partially block anadromous and resident fish passage.

PARTIES TO THE AGREEMENT:

The parties to this agreement are the Lummi Natural Resources Department, the City of Bellingham, the Nooksack Tribe Natural Resources Department, and the Washington Department of Fish and Wildlife.

OBJECTIVES:

The objectives of this Memorandum of Agreement are:

1. To use best available information to compile an inventory of those culverts owned by the City of Bellingham that may block fish passage, pursuant to the Washington State Department of Fish and Wildlife's database, as updated from time to time. For the purposes of this Memorandum of Agreement, the term, "culvert," is used to mean any structure, including dams, weirs, tidegates and floodgates, other than a full-span bridge, that is constructed to convey water beneath a roadway, footpath or railway, and shall also include associated fishways;

2. To develop the priority of remediation efforts in the case of those culverts as defined above that block or partially block fish passage using a habitat-based goal;
3. To determine a schedule for those remediation efforts. The parties to this Memorandum of Agreement recognize that the schedule may be impacted by available resources; and
4. The foregoing objectives are not intended to and do not create any legal rights or liabilities for or against any party to this Memorandum of Agreement.

ROLES AND RESPONSIBILITIES:

The parties to this Memorandum of Agreement commit, to the best of their abilities, to:

1. Provide support as needed to compile an inventory of culverts owned by the City of Bellingham and to share all relevant information of that inventory with the parties to this Memorandum of Agreement in a timely manner.
2. Provide support as needed to develop a priority list for remediation efforts at e culverts identified through this Memorandum of Agreement
3. Provide support as needed to evaluate possible remediation designs and associated costs.
4. Confer and agree on a proposed schedule for remediation efforts.
5. Provide support as needed and as available to obtain necessary regulatory permissions for any remediation efforts agreed upon by the parties to this Memorandum of Agreement.
6. Provide support as needed and as available to obtain necessary funding for remediation efforts as agreed upon by the parties to this Memorandum of Agreement.

It is the intent of the parties to secure funding for remediation efforts jointly and severally and upon doing so one of the parties may be selected as the financial lead for receipt and disbursement of funds.

Once the parties agree on an inventory of culverts as defined above owned by the City of Bellingham, the parties will enter into a separate agreement that will govern the substance and priority of remediation efforts.

DECISION MAKING:

1. Decisions shall be based on the best available information.
2. Decisions shall be made by consensus of all parties to this Memorandum of Agreement.

TERMINATION:

Any party to this Memorandum of Agreement may terminate its participation with 30 days written notice of intent to terminate to all other parties to this Memorandum of Agreement.

No amendment or alteration of this Memorandum of Agreement shall arise by implication, course of conduct, or change in state law, tribal or federal law. This Memorandum of Agreement may be altered only by a subsequent written agreement signed by all parties, expressly stating the parties' intention to amend this Memorandum of Agreement.

LIABILITIES/RIGHTS:

Nothing in this Memorandum of Agreement shall be interpreted in any manner to create any rights or liabilities for or against any party hereto. This Agreement is entered into by the parties in a good faith effort to work cooperatively to improve and to maintain fish passage through culverts owned by the City of Bellingham and is not entered into in order to create any legal rights or liabilities.

CITY OF BELLINGHAM

By: see attached
Authorized Representative


Date

LUMMI NATION

By: 
Authorized Representative

4/7/22
Date

NOOKSACK INDIAN TRIBE

By: 
Authorized Representative

10-5-22
Date

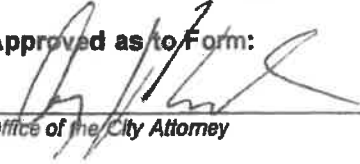
**STATE OF WASHINGTON
DEPARTMENT OF FISH AND WILDLIFE**

By: 
Authorized Representative

08/12/2022
Date

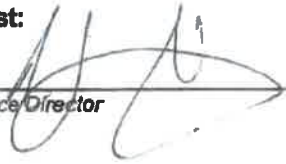
EXECUTED, this the 10 day of June, 2022, for the CITY OF BELLINGHAM:



Approved as to Form:


Office of the City Attorney


Mayor

Attest:


Finance Director

 
Department Head