

**INTERLOCAL AGREEMENT
BY AND BETWEEN
WHATCOM COUNTY FLOOD CONTROL DISTRICT AND LUMMI NATION
FOR FERNDALE ROAD PROPERTY TRANSFER**

THIS AGREEMENT is made this _____ day of _____, 2021 by and between Whatcom County Flood Control Zone District, a taxing district within a municipal corporation of the State of Washington, hereinafter referred to as “County,” and Lummi Nation, a federally recognized Native American tribe, hereafter referred to as “Nation.”

WHEREAS, the people of the Lummi Nation have lived in and around the area that is now Whatcom County, Washington, since time immemorial; the County was formed in 1854; and the State of Washington was established in 1889; and

WHEREAS, the Lummi Indian Business Council is the duly constituted governing body of the Lummi Indian Reservation by the authority of the Constitution and By-laws of the Lummi Tribe of the Lummi Reservation, Washington; and

WHEREAS, County currently owns property on Ferndale Road APN 3802080421560000; and

WHEREAS, the Lummi Natural Resources Mission Statement is: “To enhance, manage and protect the Natural Resources into perpetuity for the benefit of the Lummi People in accordance with the policy and procedures of Lummi Nation”; and

WHEREAS, the Parties recognize the need for Nation fishers to access the Nooksack River; and

WHEREAS, the Parties seek a long-term cooperative relationship aimed at improving the condition of the land; and

WHEREAS, the Parties seek to eliminate the County’s oversight and responsibility of the parcel; and

WHEREAS, the Parties have negotiated a value of \$17,000 for the parcel subject to the reservation of a conservation easement over the existing mitigation area; and

WHEREAS, the County requires wetland mitigation credits for various construction and maintenance projects; and

WHEREAS, the Nation has a wetland mitigation bank; and

WHEREAS, the Nation has an approval process to distribute wetland mitigation credits; and

WHEREAS, County and Nation find that this Agreement is in the public interest.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, IT IS MUTUALLY AGREED AND UNDERSTOOD THAT THE PARTIES, in accordance with federal, state, and local laws, will utilize their best efforts to accomplish the transfer of the Ferndale Road Property (APN: 3802080421560000) from the County to the Nation in exchange for a \$17,000 account balance to be applied toward a future wetland mitigation credit purchase by the County.

SECTION I. PURPOSE OF AGREEMENT

The purpose of the Agreement is to provide the legal framework wherein the two Parties to this Agreement support improvements to public safety, Nation fisher's access, water quality, wetlands habitat and riparian habitat, by transferring the ownership of the Ferndale Road Property from the County to the Nation.

SECTION II. NATION RESPONSIBILITIES

Nation is responsible for the following items:

1. Provide County with an account balance of \$17,000 to be put toward a future wetland mitigation credit transaction;
2. Review and process County request(s) for wetland mitigation credits per the standard credit transaction approval process.

SECTION III. COUNTY RESPONSIBILITIES

County is responsible for the following items:

1. Issuing a Bargain and Sale Deed subject to deed restrictions and a conservation easement to the Nation for the Ferndale Road Property (APN: 3802080421560000) upon execution of this agreement for the amount of \$17,000 in account balance to be applied toward a future wetland mitigation credit transaction.
2. Adhere to the standard wetland mitigation credit application process for the use of the available account balance.

SECTION IV. RELATIONSHIP OF THE PARTIES

The Parties agree that each is an independent entity operating pursuant to the terms and conditions of this agreement. No agent, employee, or representative of either Party shall be deemed to be an agent, employee, or representative of the other Party for any purpose unless requested otherwise in writing per the scope of this agreement. Each Party shall be solely and entirely responsible for the acts of its agents, employees and representatives during the term of this agreement.

SECTION V. MODIFICATION

No changes or additions to this Agreement shall be valid or binding on any Party unless such changes or additions shall be in writing executed by both Parties.

SECTION VI. NON-WAIVER OF BREACH

The failure of the County, or the Nation to insist upon strict performance of any of the covenants and conditions of this Agreement, or to exercise any options herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

SECTION VII. ARBITRATION AND MUTUAL WAIVER OF SOVEREIGN IMMUNITY

This Interlocal Agreement shall be governed by the laws of the State of Washington. The Nation, the governing body of a federally recognized Native American tribe, hereby unequivocally and irrevocably agrees to a limited waiver of its sovereign immunity with respect to enforcement of the obligations arising under this Agreement by County. This limited waiver of sovereign immunity includes a waiver of immunity as to the jurisdiction and immunity from execution of any judgment to compel or enforce any order issued by a court of the United States of America regarding this Agreement, provided that the judgment does not exceed the obligations of the Nation under this Agreement; and provided further that enforcement of such judgment may not be made against trust property or trust resources, or grants and loans restricted to governmental or economic development purposes. 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. The Nation, by execution of this Agreement, acknowledges the jurisdiction of the courts of the United States of America in this matter.

SECTION VIII. ARBITRATION OF LEGAL DISPUTES

1. The Parties to this agreement mutually covenant to work cooperatively to timely resolve any dispute that may arise between the Parties concerning this agreement. However, if the Parties cannot mutually settle a dispute, the dispute or claim shall be submitted to binding arbitration. The Parties agree that the arbitration shall be governed by the rules and procedures of the American Arbitration Association. The arbitration shall be brought for resolution at a neutral site in Whatcom County. Judgment on an award of arbitration may be brought only in the U.S. Federal District Court for the Western District of Washington. No award of arbitration shall exceed the obligations of either Party arising from this Agreement, but may include reasonable costs and fees.
2. Nation hereby agrees to a limited waiver of its sovereign immunity only for the purposes of arbitration, the enforcement of an award of or judgment on an award of arbitration, and the enforcement consistent with this arbitration clause of Nation's Responsibilities. Such waiver shall be effective only in the federal courts for the Western District of Washington. Enforcement of any award or judgment shall not be made against trust property or trust resources, or funds restricted to governmental or economic development purposes.
3. County represents that its sovereign immunity has been abrogated as between the County and Nation with respect to the subject of this Agreement. Nor does the public duty doctrine apply to the benefit of Whatcom County against Lummi Nation with respect to the subject of this Agreement. Nothing in this Agreement shall be construed as affecting the County's sovereign immunity with respect to others who are not party to this agreement, or as to Lummi Nation apart from the subject of this Agreement.
4. The laws of the United States and of the State of Washington shall govern this Agreement.

SECTION IX. NOTICE

Notices pursuant to this Agreement shall be delivered via USPO certified mail, or by private carrier via a method with similar assurances of delivery as USPO certified mail, to the following persons at the corresponding addresses below:

Nation:

Merle Jefferson, Executive Director
Lummi Natural Resources Department
2665 Kwina Road
Bellingham, WA 98226

County:

Jon Hutchings, Director
Public Works Department
322 N Commercial Suite 110
Bellingham, WA 98225

SECTION X. RECORDS

Each Party shall maintain books, records, documents and other evidence which accurately evidences all direct and indirect costs incurred by either Party in the performance of this Agreement. These records shall be subject to inspection, review, or audit by the other Party as required by applicable law. All records will be maintained for a minimum of six years after expiration.

