MEMORANDUM OF AGREEMENT

BY AND BETWEEN

The Tulalip Tribes of Washington

AND

Mt. Baker-Snoqualmie National Forest
U.S. Department of Agriculture

TO ESTABLISH A FRAMEWORK FOR A COOPERATIVE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AS PERTAINS TO THE ADMINISTRATION OF THE MT. BAKER-SNOQUALMIE NATIONAL FOREST

October 3, 2007

(As amended December 15, 2009)

(As amended May 20, 2011)

PREAMBLE

The Parties share a common interest in and responsibility for the protection and enhancement of the environment, and desire to foster a strong working partnership, through effective coordination, collaboration, open and timely communications, and the meaningful consideration of tribal interests and priorities, especially as they pertain to treaty rights in Tulalip Tribes' (hereinafter, the "Tribes") traditional aboriginal territory and treaty protected use areas in lands administered by the United States Department of Agriculture, Forest Service in the Mount Baker Snoqualmie National Forest (hereinafter "Forest Service").

The Tulalip Tribes is a federally recognized sovereign Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 U.S.C. § 476, and are successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of 1855. The Tribes view the continued availability and use of resources within the Mt. Baker-Snoqualmie National Forest as critical to perpetuating their culture and identity as a distinct Tribe. The water, the plants and the trees all serve a purpose that helps the Tulalip peoples, as a distinct tribe, to continue their cultural life ways that have been rooted for thousands of years upon this land. The Tulalip Tribes understand that this land, this place, as well as their language connect them to all things and must be conserved and nurtured. The Tulalip Tribes and the Forest Service also recognize that the Tribes' cultural continuity is tied to the constant ebb and flow of natural resources. Therefore, this agreement is much more than a piece of paper when it comes to the Tulalip peoples' historical relationship to the land as understood and valued by our ancestors. It is an instrument to acknowledge their historical legacy of respect for the land.

The Tulalip people have respected the great gift that Creator had provided for them, and took only what was necessary to sustain themselves. After the experiences of the last 500 years, the Tulalip people recognize that their natural resources and cultural life ways and values are both very fragile. Without question, the Tulalip Tribes are a land and water-based culture. Their environment gives them a distinct sense of place. They are bonded to this land by generations of elders who have gone home before them. Each place has a name in relationship to its physical characteristics, or historical significance. Their language brings them closer to those places, their names, and their stories and strengthens their relationship to the land and their identity as Indian people. The spirit has truly blessed the Tulalip Tribes and they need to do whatever they can to maintain, nurture and protect this great gift from The Creator.

The Forest Service is the agency of the United States Government responsible for managing resources, and use and occupancy of National Forest System (hereinafter, NFS) lands. The Forest Service shares in the United States Government's trust responsibilities to protect the rights of federally recognized Indian Tribes. Facilitating the exercise of treaty-reserved rights on National Forest System lands is a part of the overall management function of the agency under the broad range of federal laws that authorize National Forest activities and programs.

It is therefore in the interest of both Parties, through this Memorandum of Agreement (MOA), to clarify protocols and procedures for facilitating effective communication between

parties, to define Forest Service activities, resources, and places that are of special interest to the Tribes; and to identify opportunities for collaboration between the Parties; so as to further the protection and conservation of natural, cultural, and archaeological resources for future generations.

1.0 Recitals

The Parties hereby agree that:

1.1 The Tulalip Tribes entered into a treaty with the United States that reserved tribal hunting, fishing and gathering rights in lands that include the Mt. Baker-Snoqualmie National Forest. Since time immemorial, the Tulalip Tribes have hunted, fished, and harvested plants and other resources found on lands now managed by the Forest Service to meet their subsistence, spiritual, cultural, and medicinal needs, and for the purposes of trade and commerce. The Forest Service recognizes the Tulalip Tribes' rights to continue to practice these treaty-reserved rights on NFS lands.

1.2 The Tulalip Tribes have continuous interest in activities taking place within the Mt. Baker-Snoqualmie National Forest that affect the Tribes' cultural and archaeological resources. A significant portion of the Tribes' traditional aboriginal territory and areas used for the exercise of treaty-reserved rights overlap the boundaries of the Mt. Baker-Snoqualmie National Forest.

1.3 Further, the Forest Service recognizes a) The Tribes' inherent sovereignty and retained regulatory authority regarding their treaty-reserved rights; and b) The Tribes' ability to implement and administer a system of effective tribal self-regulation regarding tribal member exercise of those rights.

1.4 The Tribes and the Forest Service have an on-going government-to-government relationship pursuant to federal Indian law and policy; and trust responsibility of federal agencies to tribes to protect the Tribes' rights.

1.5 The Tribes recognize applicable laws, regulations and permits regarding the use and occupancy of NFS lands. Both Parties recognize the potential differences between federal and tribal regulatory approaches to the exercise of treaty-reserved rights and resources, and the potential need for harmonization of these differences to the mutual satisfaction of both Parties.

1.6 The Parties acknowledge and recognize the United States Forest Service Native American Policies as presently set forth in Forest Service Manual 1563; [American Indian and Alaska Native Relations] and Forest Service Publication FS-600 [Forest Service National Resource Book on American Indian and Alaska Native Relations, April 1997] to:

1. Maintain a government-to-government relationship with federally recognized Tribes.

2. Ensure that Forest Service employees are familiar with the rights and interests of Tribes as defined by the Constitution, treaties, statutes, Executive orders, and judicial rulings, through training and other efforts.

3. Implement Forest Service programs and activities consistent with and respecting Indian treaty rights and fulfilling the Federal government's legally mandated trust responsibility with Tribes.

4. Manage NFS lands and resources on which tribal treaty rights exist in coordination with Tribes.

5. Coordinate Forest Service land and resource management plans and actions with tribal land and resource management plans and actions to promote the health of landscapes and ecosystems.

6. Administer programs and activities in a manner that is sensitive to traditional American Indian and Alaska Native spiritual beliefs and practices and assist tribal members in securing ceremonial and medicinal plants, animals, and the use of specific geographic places, consistent with Federal policy under AIRFA and E.O. 13007 (FSM 1563.01e).

7. Protect the confidentiality of tribal information (including information regarding repatriation and reburials) received by Tribes to the extent practicable under the law.

8. Assist American Indian and Alaska Native Tribal Governments by providing technical, educational, financial, and other information, and establish information exchanges where mutually agreed to and authorized by law.

9. Work to reduce or remove legal or administrative program impediments that inhibit the agency's and Tribes' capacity to work directly and effectively with each other.

10. Consult with Tribes on matters that may affect tribal rights and interests, utilizing the following principles:

a. Comply with laws and regulations in a manner consistent with the special and unique legal and political relationship with Tribes. Government-to-government consultation generally involves more than the rights of tribal officials, as members of the general public, to comment on proposed policies or actions under other Federal laws of general applicability.

b. Collaboratively involve Tribes, as early as possible, in the development of regulatory and management policies, resource and land management plans, study plans and actions that may have tribal implications. Work with Tribes to determine whether a proposed Forest Service policy or action has implications for their rights or

interests that may warrant consultation and where consultation is necessary work with Tribes to establish an effective consultation process.

c. Respond in a timely manner to all requests for consultation by Tribes and maintain confidentiality of information to the extent authorized by law as may be implemented through Executive order.

d. Coordinate with other Federal and State agencies and local governments during consultation with Tribes.

11. Ensure that the repatriation of Native American human remains and associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony is consistent with the requirements of the Native American Graves Protection and Repatriation Act (FSM 1563.01e, para. 4).

12. Support reburial of American Indian and Alaska Native human remains and funerary objects on FS administered lands. Consider reburial requests for specific locations and provide explanation for requests that are denied.

1.7 Further, consultation and coordination with Indian Tribes is required by federal statute and as articulated under executive orders and memoranda, for example: "Government to Government Relationship With Tribes" (1994), and "Designation of Cooperating Agencies under NEPA" (Council on Environmental Quality, 2002). Such statutes and policies of particular relevance to this agreement include, but are not limited to: The National Environmental Policy Act (NEPA); the Endangered Species Act (ESA); the National Historic Preservation Act (NHPA); the Archaeological Resources Preservation Act (ARPA); the Native American Graves Protection and Repatriation Act (NAGPRA); the American Indian Religious Freedom Act (AIRFA); Executive Order 13175-Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000); and Executive Order 12898 – Federal Actions to Address Environmental Justice in Low Income and Minority Populations (Feb. 11, 1994).

1.8 The Parties recognize that each has and reserves all rights, powers, and remedies now or hereafter existing at law or in equity, or by statute, treaty or otherwise. This MOA does not modify, diminish, or alter the rights and entitlements of the Parties. The Tribes' joinder to this MOA shall not constitute a waiver of sovereign immunity or diminishment of treaty rights held by the Tribes. The MOA is intended solely to facilitate inter-governmental coordination between the Parties, and neither creates any rights in third parties nor gives rise to any right of judicial review.

2.0 DEFINITIONS

2.1 **Cultural Resources**, for the purposes of this agreement, are the landscape features, places, or objects that are important to, representative of, or contain information about Tulalip culture. Cultural resources include traditional places and materials (identified through oral tradition and/or physical evidence), historic sites and structures, and archeological resources. Cultural

resources are integral and necessary to cultural practices and activities of the Tulalip Tribes now and in the future.

2.1.1 Traditional places are landscapes, sites, places, legendary areas, and objects that are identified by the Tulalip Tribes as being important for the maintenance and perpetuation of their traditional values and practices. These places or landscapes provide a subsistence or spiritual relationship, as well as stability and meaning for the community's ceremonies, customs, and beliefs.

2.1.2 Traditional Materials are the resources used by the Tulalip Tribes to sustain their culture. Traditional materials come from a variety of natural resources indigenous to the regions' native landscapes. Traditional and current uses include medicines, foods, tools, textiles, carvings, sacred objects, pristine water, and building materials.

2.1.3 Historic Sites and Structures are locations where events and activities have taken place from contact with Euro-Americans to 50 years ago. Historic sites often, but not always, have written records that document the events and activities that occurred in a particular location.

2.1.4 Archeological Resources are the material remains of cultures in context or in place. Archeological resources are artifacts and features left in the landscape. Artifacts are the physical tools and implements of a culture, the manufactured and human altered items. Features are physical alterations in the natural environment. An archeological site is a geographic location in which archeological resources are present. These sites may reflect spatial and/or temporal patterns of land use.

3.0 OBJECTIVES

3.1 Establish a framework for a cooperative government-to-government relationship between the Tulalip Tribes and the United States government on issues relating to the Mt. Baker-Snoqualmie National Forest;

3.2 Facilitate consistent and timely communication between Parties at the appropriate levels of government;

3.3 Provide for effective participation by the Tribes in the management of the Mt. Baker-Snoqualmie National Forest, including the development, revisions and implementation of land and resource management plans, specifically Mt. Baker –Snoqualmie NF Land and Resource Management Plan, as amended, all other proposed activities within the National Forest that may affect the Tribes, and the natural and cultural resources of interest to the Tribes;

3.4 Facilitate the exercise of the Tribes' treaty hunting and fishing rights, and ensure, through collaboratively-developed management plans, tribal gathering rights and the protection and conservation of those natural and cultural resources.

3.5 Establish a framework for mutual collaboration, including technical expertise and data sharing, that will enhance the effectiveness of conservation efforts on NFS lands, as well as

enhance the Tribes' capabilities necessary to ensure their effective participation in management of NFS lands and the conservation of resources upon which they depend.

4.0. COMMITMENTS

4.1 Develop general protocols to ensure consistent, early and frequent communication between Parties, including:

- 4.1.1 What activities/events will trigger communication between parties; Identification of types of actions and specific processes that require tribal review/consultation, and/or that tribe desires participation in decision-making on the basis of it potentially affecting tribal interests
- 4.1.2 When communication is triggered (identify specific events, frequency of meetings)
- 4.1.3 How communication is triggered (e.g., email, call)
- 4.1.4 Who is responsible for communication (identify key contacts for both governments to be updated annually or as changes occur)
- 4.1.5 Define specific opportunities and processes for tribal participation in:
  - NEPA processes; (environmental assessments screening and Environmental Impact Statement processes) including protocols for early, pre-scoping notification, tribes as cooperating agencies, post project monitoring;
  - NHPA Section 106 Consultation
  - Revision of the Land and Resource Management Plan for the Mt. Baker-Snoqualmie National Forest
  - Consultation Process prior to consideration by Forest Service of the issuance or re-issuance of Special Use Permits that may affect Tulalip's reserved treaty rights.[1]
  - Other USFS activities (e.g., land exchanges and conveyances, rule-making)

4.2 Establish a collaborative framework for the sharing of documents, data, databases, and staff expertise and for the identification of consultation responsibilities.

- 4.2.1 Identify the respective roles and governmental responsibilities of the Tribes and the Mount Baker–Snoqualmie National Forest, in particular regarding environmental/cultural and archaeological review processes and surveys, and collaborative natural resource management and enforcement.
- 4.2.2 Protocols establishing Tribes' access to Forest Service archaeological and historical database.
- 4.2.3 Address protocols that apply to cultural resources, Native American burial sites, remains and funerary objects discovered on NFS lands.
- 4.2.4 Address protocols for distribution of Forest Service documents.

4.3 Facilitate the exercise of treaty hunting and fishing rights, and ensure, through collaboratively developed management plans, the protection of tribal gathering rights and the

[1] As amended May 20, 2011

conservation of those natural and cultural resources upon which they depend. The Parties specifically commit to working in good faith on mutual interests which include, but are not limited to the following:

4.3.1 Working to identify suitable areas for spiritual activities by the Tribes; Forest Service to take steps to ensure their integrity and preservation.

4.3.2 Working together to inventory plants and plant materials utilized by the Tribes for cultural purposes (including plants used for medicinal properties, basket-making, and for other cultural purposes), or by using existing inventories, identify areas Tribes can be assured of access to harvest them as needed, and provide for their conservation so as to ensure continued presence for tribal use; also identify areas where the Tribes can manage toward increased yields and sustainable harvest of resources.

4.3.3 Discussing mechanisms to ensure protecting the integrity of plant food resources used for cultural purposes, including for example, regulating or prohibiting commercial harvest and prevention of application of pesticides/herbicides to these resources; identifying steps the Forest Service can take to address Tribes' concern over competition for plant foods (i.e., berries, moss, etc) and materials as well as any other concern Tribes may have with respect to their ability to exercise their treaty protected rights on Forest Service-managed lands;

4.3.4 Identifying areas that are important for treaty hunting and fishing and instituting measures to protect and enhance wildlife and fisheries habitat, and increase game herd populations

4.3.5 Increasing treaty hunting opportunities by identifying and eliminating obstacles to the exercise of treaty rights, including opening access for tribal members to closed or gated areas for the exercise of treaty hunting rights.

4.3.6 Identifying places, use patterns, and a process for Tribes to access NFS lands as needed to harvest cedar bark, roots, windblown timber and other plant resources for cultural purposes;

4.3.7 Restoring the landscapes that has historically supported species of interest or support depressed populations and are currently degraded due to road or land use practices;

4.3.8 Discussing mechanisms to enable research to identify/verify pre-historic camp sites, and other use areas, on NFS lands, as well as additional research needs;

4.3.9 Identifying campsites suitable for Tribal member gathering and for cultural and educational purposes, which may be considered for collaborative planning and management with the Tribes;

4.3.10 Identifying areas where the Forest Service may be able to utilize Tribal personnel and resources in cooperative projects for the benefit of both the Forest Service and the Tribes.

4.3.11 Provide timely consultation with the Tribes on any proposals for land exchanges or conveyances and give due consideration to Tribal rights and interests in decision-making regarding the transfer of any lands.

5.0 MOA ADMINISTRATION AND IMPLEMENTATION

5.1 Tribes will meet annually, in March, unless otherwise agreed to, with the Forest Supervisor, and more frequently if requested by either party, to review and discuss upcoming policies and projects of mutual interest, specifically progress made in the implementation of this agreement. In addition, principal administrative contacts for this MOA and their staff will meet at regular intervals as specified in the work plan developed pursuant to Section 5.2 below, for the implementation of this agreement.

5.2 Define the specific roles, responsibilities, processes, priorities, and timeframes for the implementation of this MOA. Toward this end, it is agreed that signatories, or their designees, will, within 180 days of the signing of this agreement, will develop, with the intent to finalize, a work plan that establishes priorities for the implementation of this MOA; specifically those commitments outlined in Section 4, including timeframes, meeting schedules, and other means necessary (financial and staffing needs) to implement these commitments.

5.3 Process for Issue Resolution: both parties commit to working in good faith to seek a mutually agreeable resolution to bona fide disputes arising from this agreement. The Parties will strive to first address disputed matters informally, at the appropriate governmental level, in an effort to seek consensus. A Party may raise any matter not resolved at this level to a higher official of the other party. In the event consensus is not reached, the parties may agree to utilize the services of a neutral third party to mediate the dispute.

5.4 Nothing in this agreement is intended to waive or diminish the right of any party to challenge or appeal another parties' decision or action in accordance with applicable law.

5.5 Designate official liaisons and list their contact information for purposes of implementing this MOA.

6.0. EXECUTION OF MOA

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552 including the Act's applicable exemptions from public disclosure for specific categories of information including, but not limited to, the location and nature of historic and archaeological sites.

2. MODIFICATION. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

3. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the Forest Service or the Tribes(s) from participating in similar activities with other public or private agencies, organizations, and individuals.

4. COMMENCEMENT/EXPIRATION DATE. The instrument is executed as of the date of the last signature and will remain in effect unless terminated in whole, or in part, at any time by mutual agreement or by either party giving the other party written notice.

Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

5. PRINCIPAL CONTACTS* The principal contacts for this instrument are[2]:

Forest Service Project Contacts:	Tribes Project Contacts:
Policy Contact:	Policy Contact:
Rob Iwamoto, Forest Supervisor	Ray Fryberg, Executive Director
U. S Forest Service, Mt.-Baker Snoqualmie National Forest	Tulalip Tribes Natural Resources Department
2930 Wetmore Ave., Suite 3A Everett, WA 98201	7515 Totem Beach Road Tulalip, WA 98271
Administrative Contact:	Administrative Contact: **
Joe Neal	Libby Nelson
District Ranger	Senior Environmental Policy Analyst
Skykomish Ranger District	Tulalip Tribes Natural Resources Department
Skykomish Ranger Station, Box 305, Skykomish, WA 98288	7515 Totem Beach Road Tulalip, WA 98271
Phone: 360- 677-2414	Phone: 360-716-4639
FAX: 425-744-3265	FAX: 360-651-4544
E-Mail: jrneal@fs.fed.us	E-Mail: lnelson@tulaliptribes-nsn.gov
Staff Contacts/Areas	
Ecosystems: Cindy Tencick	
Cultural: Jan Hollenbeck	
Fisheries: Gary Ketcheson	
Wildlife : Jesse Plumage	
Timber: Dave Kendrick	
Botany: Laura Martin	
Planning: Curtis Spalding	

[2] As amended May 20, 2011

*In the event of a change in "Principal Contacts", responsible party will notify, as soon as practicable, the other party of the new principal contacts and the corresponding address and telephone/fax/email information.

**This person will serve as the initial point of contact for all administrative matters related to this agreement. The appropriate Tribes' technical staff persons will be consulted, as specific issues require.

6. NON-FUND OBLIGATING DOCUMENT. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the Tribes of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

THE PARTIES HERETOFORE have executed this instrument, as amended May 20th of 2011:

The Tulalip Tribes

BY: _____ 6/20/11
Chairman Date

Mt. Baker-Snoqualmie National Forest

BY: _____ 05.20.11
Forest Supervisor Date