

ORIGINAL

**Memorandum of Agreement for the Elliott Bay Seawall Project  
Between the City of Seattle Department of Transportation and the  
Muckleshoot Indian Tribe**

**IDENTIFICATION OF PARTIES AND PROJECT**

This Memorandum of Agreement (Agreement) is entered into between the City of Seattle Department of Transportation (SDOT) and the Muckleshoot Indian Tribe (TRIBE). SDOT and the TRIBE are hereinafter collectively referred to as the “Parties” and individually “Party.” The Parties hereby agree, as allowed and limited by applicable law, to the following terms and conditions governing the Elliott Bay Seawall Project.

For purposes of this Agreement, the Elliott Bay Seawall Project (Project) is defined as the preferred alternative for the replacement of the Elliott Bay Seawall, as described in the Final Environmental Impact Statement (FEIS) issued by SDOT in March 2013, including any terms or conditions required by federal, state or local permits and other authorizations for the Project.

**PURPOSE OF AGREEMENT**

The purpose of this Agreement is to fully and fairly resolve the issues associated with the impacts of the Project on the TRIBE’s rights and interests, by delineating the commitments by all Parties related to avoiding, minimizing, and resolving the impacts of this Project on Treaty rights.

**RECITALS**

1. SDOT issued an FEIS in March, 2013, in which the preferred alternative was identified for replacement of Elliott Bay Seawall.
2. With regard to fishing activities, the TRIBE is a successor in interest to tribes and bands that were parties to the Treaty of Point Elliott, 12 Stat. 927, and the Treaty of Medicine Creek, 10 Stat. 1132, in which the Indian signatories reserved the right to fish at usual and accustomed grounds and stations. The TRIBE has adjudicated Treaty fishing and gathering rights, including the right to take fish at its usual and accustomed fishing grounds and stations. *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974); *Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504 (W.D.

Wash. 1988). The Project will be constructed within the TRIBE'S usual and accustomed area.

3. The construction of the Project and subsequent maintenance of the Project could affect the exercise of the TRIBES's Treaty rights.
4. SDOT and the TRIBE have a mutual interest in recognizing the TRIBE'S presence on the Seattle Waterfront.
5. SDOT and the TRIBE have met on a government-to-government basis to explore opportunities to modify the Project in order to avoid or minimize its potential impacts on the TRIBE's Treaty rights and have met to discuss measures to minimize and resolve the impacts from the Project on the TRIBE's Treaty rights.
6. This Agreement is the result of government-to-government consultation and reflects mutual commitments and undertakings of the Parties pertaining to the Project.
7. The Parties desire that this Agreement provide a non-exclusive means for TRIBE fishers to resolve claims against SDOT for damage to fishing gear, lost fishing time and for net moves, even though the TRIBE fishers are not parties to this Agreement nor are they intended to be third-party beneficiaries of this Agreement.

**NOW, THEREFORE**, the above recitals are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, **IT IS MUTUALLY AGREED AS FOLLOWS:**

## **TERMS AND CONDITIONS**

### **8. Selected Alternative**

SDOT intends to implement the Preferred Alternative for the Project, as described in the FEIS issued in March 2013. The Parties recognize that the building of the Project is subject to the availability of funds and the timely receipt of necessary federal, state and local regulatory approvals. The Parties recognize that the Project construction schedule may be modified during the design and construction process consistent with the requirements of SEPA.

Although the Project is not yet fully funded, this Agreement addresses the Project's impacts on the TRIBES's Treaty rights, including impacts from Project modifications and maintenance activities that do not materially increase the impacts on the TRIBE's Treaty rights beyond those described in the FEIS.

### **9. Treaty Impact Measures**

The TRIBE has expressed concern about the impact of the Project on its Treaty rights

in areas that will be affected by the Project. The Parties agree that the Project is likely to impact the TRIBE's Treaty rights and that it is difficult to assess and quantify those potential impacts. The Parties believe that interference with the TRIBE's Treaty rights could result from construction activities such as material loading/offloading, barging activities, construction and maintenance activities of the seawall and habitat features. Impacts of proposed Project activities are described in the FEIS. Accordingly, the Parties agree the measures described in this Agreement are reasonable and appropriate to address the anticipated Project interference with the TRIBE's Treaty rights:

9.1 Impacts to Treaty Rights:

The Parties recognize that the Project will impact the TRIBE's Treaty rights. SDOT agrees to compensate the TRIBE Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000) in satisfaction of any and all claims, disputed or not, associated with the impact of the Project on the TRIBE's Treaty rights.

9.2 Fishing Coordination During Construction:

The TRIBE and SDOT have developed Operational Protocols (Attachment A), attached hereto and by this reference made a part of this Agreement, that coordinate Project in-water construction activities and TRIBE fishing activities, consistent with Treaty rights and with SDOT safety, security and other operational requirements. The Parties agree to update these protocols, as appropriate, to capture revised construction schedules, but no less often than annually in June of each year.

9.3 Vessel Coordination Program:

Between October and December for each year, the TRIBE shall provide staff, on-site, from 7 am to 7 pm at the locations of fishing activities in the Project area to coordinate fishing activity with construction equipment (e.g., barges) to minimize fishing gear conflicts with construction activities. Attachment A (Operational Protocols) describes the roles and responsibilities of the Vessel Coordination Program.

SDOT agrees to compensate the TRIBE One Hundred Fifteen Thousand Dollars (\$115,000.00) per year towards its vessel coordination program, in order to provide for its vessel coordination activities between October and December. Compensation under this program includes an annual inflation adjustment as described in Section 11.4. In the event the TRIBE does not expend the total amount each year for the coordination program, or if there is no fishery, the TRIBE agrees to use the remaining funds for fisheries purposes.

SDOT also agrees to compensate the TRIBE One Hundred Twenty-Five Thousand Dollars (\$125,000.00) in a onetime payment for a purchase of a vessel to help the TRIBE run the Vessel Coordination Program. At the end of Project construction, the TRIBE will retain the vessel.

For the duration of construction, the TRIBE agrees to request that TRIBE fishers avoid treaty fishing activity within twenty five (25) feet of the Elliott Bay Seawall construction zone during the month of September to avoid conflicts with seawall

construction activities. It is acknowledged that barging will take place in months when the vessel coordination program is not operational, however SDOT agrees that no ingress/egress of barges will take place during August and September, or in a manner that interferes with any of the TRIBE's test/evaluation fisheries during the month of July. As the test/evaluation fisheries times and locations are known in advance, the TRIBE will provide at least three (3) weeks advance notice to SDOT as to the time and location the test/evaluation fisheries are scheduled to occur.

9.4 Net Moves During Construction:

SDOT agrees to compensate the TRIBE fishers the rate of Three Hundred Fifty Dollars (\$350.00) for moving each set- or drift-net to accommodate the movement of a barge to or from the Project construction site or other Project-related marine vessel traffic.

SDOT will establish a process to facilitate payment to the TRIBE and individual fishers. In order for payment to be made to the TRIBE fisher, the process for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Net Move Form (Attachment B), attached hereto and by this reference made a part of this Agreement.

9.5 Gear Damage / Replacement and Lost Fishing Time:

9.5.1 In the event that any TRIBE fisher's set- and drift- net and any other gear is damaged as a result of barge activities or other Project construction activities, SDOT shall replace the damaged gear and compensate the TRIBE fishers for lost fishing time as described in Section 9.5.2. For the purposes of this Section, gear is defined as any equipment used for the harvesting of fish, or shellfish, and includes vessels used for such harvesting, as permitted by applicable law.

In order for replacement gear or lost fishing time payment to be made to the TRIBE fisher, the process for documenting, approval, and payment for this provision must be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement and Lost Fishing Time Forms (Attachments C and D), attached hereto and by this reference made a part of this Agreement, must be completed and executed by all signatories on the forms.

To facilitate gear replacement and avoid the prolonged loss of fishing time, SDOT will provide an initial payment of Seventeen Thousand Five Hundred Dollars (\$17,500) for the TRIBE to acquire two coho set nets, two chum set nets, two shackles coho gear, and two shackles chum gear. The initial payment also includes compensation for the time and labor for the TRIBE to hang the nets. The stockpiled nets/gear will be used to replace gear damaged by Project activities. In the event the stockpile of nets and gear is used according to the process outlined in Attachment A (Operational Protocols), SDOT will provide additional funds for actual costs incurred by the TRIBE, to replenish the stockpile for the duration of the Project, upon submission of an invoice by the TRIBE, as described in Attachment A (Operational Protocols). Approved and fully executed Gear Damage/Replacement Forms (Attachment C), will serve as supporting documentation for the invoice. At the end of Project construction, the TRIBE will retain any remaining nets and gear.

In the event the TRIBE is not able to replace damaged gear with the stockpiled nets and gear, SDOT agrees to compensate the TRIBE fishers for the replacement value of the gear, as described Attachment A (Operational Protocols). As with net moves and gear replacement, compensation for damaged gear requires the process to be followed as detailed in Attachment A (Operational Protocols) and the Gear Damage/Replacement Form (Attachment C).

9.5.2 Lost Fishing Time: In the event that a TRIBE fisher's net or gear is damaged, SDOT will also compensate the TRIBE fisher for two (2) lost days of fishing time. Compensation for lost fishing time shall be based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern, the day of the gear damage or loss and the following day. The process for this provision is documented in Attachment A (Operational Protocols) and the Lost Fishing Time Form (Attachment D), must be completed and executed by all signatories on the form.

## 10 Tribal Access and Representation

### 10.1 Interpretive Center:

If the Central Waterfront Program is fully funded, SDOT will provide a minimum of 10,000 square feet of space, suitable for an interpretive center, at a mutually agreeable location in a building within the Central Waterfront Program footprint for a Tribal Interpretive Center, without charging rent for use of the space. If space cannot be allocated within a building, then SDOT will use its best efforts to provide an alternative mutually agreeable location. The TRIBE will be financially responsible for all aspects of the Center, including coordination with other Tribes, design, development, staffing, operation and interior maintenance.

The Interpretive Center needs to be open within six (6) months of the completion of the Central Waterfront Program construction of the space, unless SDOT agrees to a later time. The TRIBE will have 6 months after SDOT notifies the TRIBE that a specific location has been identified for this purpose to decide whether or not to proceed with development of the Interpretive Center and to notify SDOT of its decision. Within 6 months of the TRIBE notice of intent to proceed with the Interpretive Center, the TRIBE shall submit an implementation plan to SDOT for review, which will become the basis of the lease agreement between the TRIBE and SDOT. This lease agreement and its terms will be reevaluated every 15 years.

### 10.2 Content for Interpretive Signs/Kiosks:

SDOT will coordinate with the TRIBE as identified in the Section 106 MOA to develop culturally appropriate content for inclusion in interpretive signs or kiosks that will be installed permanently along the waterfront. As stated in the Section 106 MOA, SDOT will allocate \$25,000 for implementation of the signs and kiosks.

### 10.3 Annual Canoe Journey:

SDOT will work with Seattle Parks and the TRIBE over the next twelve (12) months to identify and provide a suitable location for the annual canoe journey that may include overnight camping. SDOT and Parks will take steps to reduce the amount of time and effort involved for the Tribe to get permits and permissions to use City property for the landing.

## 11. Payments

### 11.1 Annual Payments

For the first payment for the Vessel Coordination Program (as described in Section 9.3), the TRIBE will invoice SDOT after execution of this agreement. Payment will be made within 60 calendar days of receipt of invoice by SDOT. For subsequent annual payment for the Vessel Coordination Program, made only in years the Project is in construction, the TRIBE will invoice SDOT no earlier than December 1<sup>st</sup> of the previous year. Payment will be made by SDOT to the TRIBE within 30 calendar days of receipt of invoice by SDOT.

### 11.2 Onetime Payment

For the onetime lump sum payment for the impacts to Treaty Rights (as described in Section 9.1), purchase of a vessel (as described in Section 9.3) and the Gear Replacement stockpile (as described in Section 9.5), the TRIBE will invoice SDOT after the commencement of in-water construction. Payment will be made by SDOT to the TRIBE within 60 calendar days of receipt of invoice by SDOT.

11.3 Each invoice will include the Agreement title, the day, month, and year. Invoice templates for all Treaty impact measures are attached to this Agreement, as follows:

11.3.1 The Invoice Template (Attachment E), attached hereto and by this reference made a part of this Agreement, provides an example invoice for Annual Payments (as noted in Section 9.3) and for replenishing the stockpiled nets/gear as needed (as described in Section 9.5).

11.3.2 The Net Move Form, Gear damage/Replacement Form and Lost Fishing Time Forms (Attachments B, C and D) serve as invoices for Net Moves During Construction (as described in Section 9.4) and Gear Damage / Replacement and Lost Fishing Time (as described in Section 9.5).

11.3.3 All invoices will be processed as outlined in the Operational Protocols (Attachment A).

11.3.4 SDOT agrees to make payment to the TRIBE within the timelines outlined in this agreement.

11.4 All amounts noted in this Agreement shall be in 2013 dollars using the June 2013 Consumer Price Index for All Urban Consumers, U.S. City Average, all items (Index), as published by the United States Department of Labor, Bureau of Labor Statistics, as the base year. The initial annual payment of \$115,000 for 2013 shall be made as indicated in section 11.1. For subsequent years, payments will be adjusted for inflation based on the June Index for the year the payment is due, as compared to the June 2013 base Index.

**12. Amendment**

This Agreement may be amended by written agreement of the Parties. Such amendments shall be signed by the Parties' Lead Representatives, as noted in Section 22.

**13. Technical Attachments**

All Attachments to this Agreement may be modified with the written approval of the Parties' Designated Representatives, as noted in Section 22.

**14. No Objection to Project**

The TRIBE agrees that it will not object to or otherwise oppose the Project in any federal, state, or local regulatory, administrative, or judicial proceedings associated with the permitting, financing, and construction of the Project, including any permit modifications or NEPA/SEPA reevaluations for the Project that do not materially increase the impacts of the Project on the TRIBE's Treaty rights beyond those described in the FEIS. Upon the execution of this Agreement, the TRIBE agrees to transmit a letter via electronic mail to the US Army Corps of Engineers, referencing the Project, stating that the TRIBE does not oppose the issuance of federal permit approval for the Project. This letter will be sent no later than one (1) business days following receipt of an executed Agreement.

**15. Release**

The Parties agree that the terms of this Agreement constitute a full and fair settlement regarding actual or potential interference with the TRIBE's Treaty rights including, but not limited to, potential interference with TRIBE fishing access resulting from the Project.

Except for those obligations which SDOT undertakes in this Agreement, the TRIBE, its successors or assigns, hereby release and forever discharge SDOT, their agents and contractors from any and all claims, demands and causes of action of any nature whatsoever against SDOT for damages or equitable or other non-monetary relief associated with the impact of the Project on its Treaty rights. This release does not pertain to claims or causes of action resulting from the Project for other than anticipated potential impacts to the TRIBE's Treaty rights.

**16. Integration and Severability**

This Agreement constitutes a single integrated contract that expresses the entire agreement of the Parties hereto. Any prior representations or agreements, whether oral

or written, in regard to this Agreement or its subject matter are hereby superseded in their entirety by this Agreement. If any provision of this Agreement is held invalid, it shall be considered severable from the remainder, and the remaining provisions shall be given full force and effect, provided that such remainder conforms to the terms and requirements of applicable law and the intent of this Agreement.

**17. Termination**

In the event that SDOT makes material modifications to the Project that may increase the adverse impact of the Project on the TRIBE's access to its usual and accustomed Treaty fishing grounds and stations, then the TRIBE may withdraw from this Agreement after providing at least thirty (30) calendar days written notice to SDOT and after complying with the dispute resolution requirements of Section 21 of this Agreement. Any dispute about whether modifications to the Project are "material" or whether they result in increased adverse impacts to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations shall be resolved in accordance with the dispute resolution provisions of Section 21. In the event that the TRIBE withdraws from this Agreement pursuant to this Section, the TRIBE agrees to enter into additional negotiations with SDOT regarding the extent of the modified Project's increased adverse impact to TRIBE's access to its usual and accustomed Treaty fishing grounds and stations. In the event that the Parties enter into a subsequent agreement regarding the Project impact to the TRIBE's Treaty fishing access rights, any mitigation or compensation already provided to the TRIBE by SDOT shall be included in any new agreement negotiated by the Parties.

**18. Agreement Binding**

The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

**19. Authority to Sign**

The TRIBE represents, warrants, and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized. As part of this Agreement, the TRIBE will furnish a copy of the resolution of the Tribal Council granting authority of the undersigned to execute this Agreement on behalf of the TRIBE no later than five (5) business days following execution of this Agreement.

SDOT represents warrants and covenants that it has the authority to enter into this Agreement, and that its execution and delivery have been duly authorized.

**20. Declaration**

The undersigned hereby declare that the terms of this Agreement have been completely read and fully understood and voluntarily accepted for the purpose of making the full and final compromise, adjustment and settlement of any and all claims between the Parties, disputed or otherwise, prior to the date of this Agreement, and for the express purpose of precluding forever any additional claims between the Parties arising out of or in any way connected with the Project interference with the TRIBE's Treaty rights, including construction and operations associated with the Project, except for claims

arising from the duties and obligations of the Parties under this Agreement.

## 21. **Dispute Resolution Process**

21.1 The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.

21.2 **Informal Resolution.** The informal resolution process begins at the staff level and is raised to the higher organizational levels, if necessary.

In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon, mediator. The Parties shall share equally in the cost of the mediator.

Each Party agrees to compromise to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.

The Parties agree that they shall have no right to seek relief in a court of law until and unless the Dispute Resolution process has been exhausted.

## 22. **Lead and Designated Representatives**

Lead Representatives

- a. Muckleshoot Indian Tribe  
Virginia Cross, Chair  
Muckleshoot Indian Tribe  
39015 - 172nd Avenue Southeast  
Auburn, WA  
98092 (253) 939-  
3311
  
- b. SDOT  
Peter Hahn  
Director, Seattle Department of Transportation  
700 Fifth Avenue, Suite 3900  
PO Box 34996  
Seattle, WA 98124-4996  
206-684-5000

Designated Representatives

a. Muckleshoot Indian Tribe

Isabel Tinoco, Fisheries Director  
Muckleshoot Indian Tribe  
39015 - 172nd Avenue Southeast  
Auburn, WA  
98092 (253) 939-  
3311

b. SDOT

Jessica Murphy  
Project Manager, Seattle Department of Transportation  
700 Fifth Avenue, Suite 3900  
PO Box 34996  
Seattle, WA 98124-4996  
206-684-0178

**23. Reservation of Rights, No Waiver of Claims**

Except as provided in Section 25, by entering into this Agreement, the TRIBE does not waive any rights to exercise its Treaty rights, and any and all such rights are hereby expressly reserved. Nothing in this Agreement is intended to or shall be construed to constitute an admission by any Party that the geographic areas referenced in this Agreement corresponds to, defines or otherwise represents an accurate final legal description of the TRIBE's usual and accustomed fishing areas.

**24. Indemnification**

To the maximum extent authorized by law, the Parties shall indemnify and hold harmless one another and their employees and/or officers from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against a Party arising out of, in connection with, or incident another Party's own negligent performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the Parties, their employees and/or officers, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Parties, their employees and/or officers. The Parties agree that their obligations under this Section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Parties, by mutual negotiation, hereby waive, with respect to the other Party only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

The provisions of this Section shall survive the termination of this Agreement.

**25. Waiver of Sovereign Immunity and Venue**

25.1 The TRIBE expressly agrees to a limited waiver of sovereign immunity. The waiver is limited to actions brought by SDOT for breach, termination, enforcement of Agreement provisions, including specifically Section 24 herein, interpretation, validity thereof, including the determination of the scope or applicability of this Agreement. This limited waiver is available solely to claims by SDOT and not by any other entity, entities, or any individual or third party, not a Party to this Agreement. The TRIBE agrees not to invoke sovereign immunity as a defense to a claim upon its insurance policy in connection with the enforcement of the rights of SDOT.

25.2 The TRIBE consents to the jurisdiction of the Washington State Superior Court in the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement if dispute resolution pursuant to Section 21 fails.

The Parties further agree that venue for any such action or proceedings arising out of this Agreement shall be in the superior court situated in King County, Washington.

**26. Governing Law**

The Parties agree that this Agreement and all questions concerning the performance of this Agreement shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to the choice of law.

IN WITNESS WHEREOF, the Parties hereto agree to the terms and conditions of this Agreement as of the day and year last written below.

<p><b>MUCKLESHOOT INDIAN TRIBE</b></p> <p>Date: <u>10-18-13</u></p> <p>By: <u><i>Virginia Cross</i></u></p> <p>Virginia Cross, Chairperson Muckleshoot Indian Tribe</p>	<p><b>CITY OF SEATTLE, DEPARTMENT OF TRANSPORTATION</b></p> <p>Date: <u>10-23-13</u></p> <p>By: <u><i>Peter E. Hahn</i></u></p> <p>Peter E. Hahn, Director Seattle Department of Transportation</p>
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# **Elliott Bay Seawall Replacement Project**

## **Attachment A**

Operational Protocols to Avoid Impacts to Treaty Fishing During In-Water Construction

# 1. Introduction

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The following plan will guide the Elliott Bay Seawall Project (Project) as SDOT prepares for and carries out construction activities to replace the Elliott Bay Seawall along the City of Seattle waterfront.

This plan is designed to identify appropriate channels of communication and notification protocols for work in the project area to ensure that SDOT and the Muckleshoot Indian Tribe (TRIBE) are actively communicating and aware of each other's activities.

SDOT and the TRIBE agree to update these protocols each June of every year, or more frequently as appropriate.

## Organizational Structure and Primary Points of Contact

The SDOT Project Manager is the SDOT responsible representative and primary point of contact for all matters related to the Project during construction. Secondary contact is the Resident Engineer.

SDOT contact information is as follows:

Name	Title	Desk	Email
Jessica Murphy	Project Manager	206-684-0178 Desk 206.214.7193 Cell	Jessica.murphy@seattle.gov
Jody Robinson	Resident Engineer	206.962.7667 Cell	jody.robinson@jacobs.com
Mike Mahovich	Muckleshoot Indian Tribe Fish Harvest Manager	(253) 876-3113	Mike.Mahovich@muckleshoot.nsn.us

## 2. Goals and Expected Outcomes

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### Goals

SDOT recognizes that the areas around the Elliott Bay Seawall Project are sensitive areas and an important resource to the TRIBE. Communication during in-water construction activities will be focused in these areas:

- Establish clear channels of communication to keep SDOT and the TRIBE informed of project activities and TRIBE fishing activities.
- Clearly communicate Project schedules and activities that may have an effect on TRIBE fishing activities. Provide timely notification of unexpected schedule changes.
- Maintain good relations during fish harvest openings and construction activities for the duration of the Project construction.

- Avoid adverse interactions with fish harvest activities and provide for the safety of TRIBE fishers, SDOT and its contractors.
- Identify processes to address any unavoidable or unanticipated impacts on TRIBE fishing activities that may occur during construction.

### **3. Communication Approach**

#### **How we will communicate**

- Weekly Reports – During construction, SDOT will provide schedule updates every two weeks to identify work underway and work scheduled to occur. The update will be sent out via e-mail from the SDOT Project Manager or Designee.
- Notification Triggers – SDOT will provide written notification and verbal notification (telephone call) a minimum of one (1) week in advance of certain activities that are scheduled to occur in Elliott Bay. Those activities include:
  - i) Barge deliveries
  - ii) Installation of in-water containment systems and BMPs.
- A process is needed to communicate net move requests for net moves. This process will be jointly developed by both Parties.
- Ad hoc communication via e-mail and telephone conversation as needed.
- Urgent matters or changes to original schedules will be communicated in a timely manner via telephone/conference call between the identified points of contact.

#### **Elliott Bay Fishery Seasons    Approximate Timeframe**

Chinook	July 15 through August 25
Pink (odd years)	August 25 through September 21
Coho	September 1 through October 31
Chum	October 21 through December 15
Steelhead	November 21 through December 31

## **4. Process related to Vessel Coordination Program and Compensating for Fishing Impacts**

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### **Fishing Impact Avoidance and Minimization**

During the month of September for every construction year, no Project barge deliveries will be allowed to the project area. Work to install sheet piles, containment structures, and other in-water work will be primarily land-based but may be supported by small vessels. In September for every construction year, the TRIBE agrees that fishers will set nets at least 25 feet away from the project construction area.

For the months of October, November, and December, SDOT and the TRIBE will coordinate to minimize impacts treaty fishing per the protocols in this coordination plan. SDOT will provide compensation for a TRIBE Vessel Coordination Program to coordinate construction activities and TRIBE fishing activities, as included in the Vessel Coordination Program described in this agreement. The role of the TRIBE Vessel Coordination Program is described below.

### **Responsibilities for Schedule Coordination**

#### Role of the TRIBE Vessel Coordination Program

- Notify the SDOT Project Manager no later than one (1) week in advance of a potential fishery, so that SDOT can notify the contractor of anticipated fishing activities.
- Coordinate with individual TRIBE fishers regarding verification and documentation of claims.
- Coordinate fishing activity with Project marine traffic such that construction activities and fishing gear conflicts are managed and minimized to the extent possible.
- Distribute and manage the gear stockpile and distribute gear to TRIBE fishers once the Gear Damage/Replacement Form is approved by all Parties.

#### Role of the SDOT Project Manager

- The Project Manager will provide oversight to ensure commitments as described in this document and agreement.
- The Project Manager will be the primary point of contact for the TRIBE for issues associated with this agreement.
- The Project Manager will approve invoices submitted by the TRIBE per this agreement.

- The Project Manager will coordinate construction activities between the contractor and the TRIBE to resolve any issues and disputes.

#### Role of the SDOT Resident Engineer

- The Resident Engineer will ensure schedule updates are transmitted to the TRIBE Vessel Coordination Program.
- The Resident Engineer will provide written and verbal notification to the TRIBE Vessel Coordination Program a minimum of one (1) week in advance of activities for activities described in Section 3.
- The Resident Engineer will invite the TRIBE Vessel Coordination Program to participate in a conference call one (1) week prior to commencing any activity identified as a notification trigger (above).
- The Resident Engineer will ensure that the TRIBE Vessel Coordination Program is informed of changes in schedules or other urgent matters.
- The Resident Engineer will ensure that the contractor complies with all environmental contract permits.

### **Process for Verifying Claims and Payment**

In the event there is TRIBE gear damage or gear replacement, a net move is necessary, or related lost fishing time (if applicable) as a result of the Project activities, the process for verifying claims and payment is as follows:

1. The TRIBE Vessel Coordination Program completes and submits the appropriate net move, gear damage/replacement or lost fishing time form (Claim Form: Attachments B, C, and D) via email to the SDOT Project Manager. The Claim Form will serve as the documentation to verify a TRIBE fisher's claim for a net move occurrence, gear damage/replacement request, use of the gear/net stockpile or compensation for lost fishing time. TRIBE approved and signed Claim Forms are to be submitted to SDOT Project Manager for review and approval within ten (10) business days of the incident for which the claim is being submitted.
2. The SDOT Project Manager receives and verifies the appropriate Claim Form, then approves or rejects the Claim Form within five (5) business days of receipt of Claim Form and sufficient supporting documentation as described in the Claim Forms (Attachments B, C, and D). The SDOT Project Manager emails the approved Claim Form and supporting documents to SDOT Accounting or rejected Claim Form to the TRIBE Vessel Coordination Program. If the SDOT Project Manager is not available, the Resident Engineer can complete process steps as the SDOT Project Manager's designee (as noted in Section 1 of this document).

3. Upon receipt, SDOT Accounting will review and process the approved Claim Form within ten (10) business days of receipt from the Project Manger or designee. If sufficient, SDOT Accounting will process payment to be mailed, within ten (10) business days of receipt from the Project Manager or designee. If insufficient, SDOT Accounting will send the Claim Form and supporting documentation back to the SDOT Project Manager, along with documentation outlining deficiencies, within the ten (10) days of receipt. The SDOT Project Manager will send this list back to the TRIBE within five (5) days.
4. SDOT Accounting will authorize payment and mail checks to the address on the Claim Form.
5. If SDOT rejects the Claim Form, the Parties will try to resolve any issues at the lowest organizational level.
6. If gear replacement nets provided by the TRIBE are used, the TRIBE will also submit an Invoice (Attachment E) in addition to a Claim Form (Attachment C) via email to the SDOT Project Manager. The Parties will verify the inventory of nets described in Section 9.5. SDOT will not be liable for any lost or damaged nets or gear as stored in the stockpile under the TRIBE's management. Payment processing will follow steps 1 through 5 above.
7. The TRIBE will submit an Invoice (Attachment E) and supporting documentation for the Vessel Coordination Program and vessel purchase. Payment processing will follow steps 1 through 5 above.

V1



**Muckleshoot Indian Tribe**  
Fisheries Division



**Seattle Department of Transportation**  
Elliott Bay Seawall Project

INVOICE #: \_\_\_\_\_

**NET MOVE FORM**

For reimbursement under the terms of (add #)

<b>AGENCY</b>			
SDOT			
<b>MONTH\DAY\YEAR</b>	<b>TIME: AM \ PM</b>	<b>PARTY REQUESTING MOVE</b>	<b>CONTACT INFO. PHONE #</b>
<b>LOCATION</b>	<b>NAME OF VESSEL OR BARGE</b>	<b>NAME OF TUG OR PILOT</b>	
<b>VESSEL DEPARTING FROM\DESTINATION TO</b>			

**FISHER TO BE PAID**

(FISHER RESPONSIBLE FOR MOVING NET\GEAR)

<b>FISHER ID. #</b>	<b>FULL NAME</b>	<b>CIRCLE ONE</b>
		II III IV V Jr Sr NONE
<b>FISHER ADDRESS</b>		<b>FISHER SIGNATURE</b>
STREET ADDRESS		Fisher Signature* _____ Date _____
CITY STATE ZIP		<b>VESSEL PROGRAM COORDINATOR SIGNATURE</b>
Ph. # _____		I, _____ <i>Vessel Program Coordinator Name</i>
		have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.
		Vessel Program Coordinator Signature* _____ Date _____

I, \_\_\_\_\_  
*Print SDOT Project Manager Name (First, Last)*

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved?     YES     NO

If no, comments are as follows:

SDOT Project Manager Signature\* \_\_\_\_\_ Date \_\_\_\_\_

Indicate estimated date for check delivery/pick up: \_\_\_\_\_

**\*By submitting and signing this form, the signatories agree to the following:**

- The net move occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of (agmt #).
- Backup documentation has been attached to this invoice, including, but not limited to, the description of event and additional information to support the net move invoice amount to be paid.

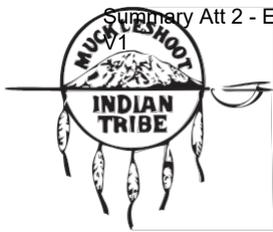
**The Tribe authorizes and directs invoice amount to be made to the following:**

\_\_\_\_\_  
Print Name (First, Last)

MIT Fishing ID #  
\_\_\_\_\_

**Total invoice amount to be paid:**

\$ \_\_\_\_\_



Muckleshoot Indian Tribe  
Fisheries Division



Seattle Department of Transportation  
Elliott Bay Seawall Replacement Program

# GEAR DAMAGE/REPLACEMENT FORM

For reimbursement under the terms of **AGRMT #**

INVOICE #: \_\_\_\_\_

AGENCY RESPONSIBLE	LOCATION	DATE OF INCIDENT	TIME
SDOT			
NAME OF VESSEL OR BARGE	NAME OF TUG OR PILOT	VESSEL DESTINATION	
PICTURES OF DAMAGE		INDEPENDENT WITNESS TO DAMAGE	
<input type="checkbox"/> YES, ATTACHED <input type="checkbox"/> NO		FULL NAME _____ PHONE # _____	
FISHER TO BE COMPENSATED		TYPE OF GEAR LOST (CIRCLE ALL THAT APPLY)	
FISHER ID. # - _____ FULL NAME _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____ PHONE _____ # _____ I, _____ <i>Print Name (First &amp; Last)</i>		<b>CIRCLE ONE</b> II III IV V Jr Sr NONE	
		SET-NET	
		MESH SIZE _____ IN. GEAR BOUY BALL      ANCHOR      A.CHAIN      J. LIGHT      ROPE	DEPTH _____ FT. LENGTH _____ FT.
		DRIFT-NET	
		MESH SIZE _____ IN. GEAR BOUY BALL      ANCHOR      A.CHAIN      J. LIGHT      ROPE	DEPTH _____ FT. LENGTH _____ FT.
		<b>ADDITIONAL GEAR LOST:</b> _____	
I agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the City, provided this claim is approved by SDOT.		<b>IS THE GEAR REPLACED BY GEAR IN THE STOCKPILE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
FISHER SIGNATURE * _____ DATE _____		I, _____ <i>Print Vessel Program Coordinator Name (First &amp; Last)</i> have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.	
ATTACH TO THIS FORM: SIGNED FISHERS STATEMENT, SIGNED WITNESS STATEMENT IF ANY, ALL RELEVANT PICTURES OF DAMAGE.		VESSEL PROGRAM COORDINATOR SIGNATURE* _____	
		DATE _____	

I, \_\_\_\_\_  
*Print SDOT Project Manager Name (First, Last)*

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved?     YES     NO

If no, comments are as follows:

\_\_\_\_\_

SDOT Project Manager Signature\* \_\_\_\_\_ Date \_\_\_\_\_

Indicate estimated date for check delivery/pick up: \_\_\_\_\_

**\*By submitting and signing this form, the signatories agree to the following:**

- The gear damage/replacement occurred as a result of Elliott Bay Seawall Replacement Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to **(Agmt #)**
- Backup documentation has been attached to this invoice, including, but not limited to, a summary of detailed costs for gear damage/replacement (such as vendor's quote or actual invoice) to support the total invoice amount to be paid.

**The Tribe authorizes and directs invoice amount to be made to the following:**

\_\_\_\_\_

Print Name (First, Last)

\_\_\_\_\_

MIT Fishing ID #

\_\_\_\_\_

**Total invoice amount to be paid:**

\$ \_\_\_\_\_



Fisheries Division

Seattle Department of Transportation  
Elliott Bay Seawall Replacement Program



# LOST FISHING TIME FORM

For reimbursement under the terms **AGMT #**

INVOICE #: \_\_\_\_\_

<b>FISHER ID. # -</b> _____	
<b>FULL NAME</b> _____	<b>CIRCLE ONE</b> II III IV V Jr Sr NONE
<b>ADDRESS</b> _____	
<b>CITY</b> _____	<b>STATE</b> _____ <b>ZIP</b> _____
<b>PHONE #</b> _____	
I, _____ <i>Print Name (First &amp; Last)</i>	
agree I will not file any other claim for reimbursement of gear damages (as described in this form) from the State.	
<b>FISHER SIGNATURE *</b> _____	<b>DATE</b> _____

<b>DATE OF INCIDENT</b>
<b>ASSOCIATED GEAR DAMAGE INVOICE #</b>

**Calculation of lost fishing time:**  
*Two (2) days of lost fishing time due to this gear damage event will be reimbursed. Calculation is based on the value of the average of the three highest catches recorded for the open fishing area during the period of concern on the day of the gear damage or loss and the following day.*

Catch Record Data	Day 1	Day 2
1	_____	_____
2	_____	_____
3	_____	_____
Average total	\$ _____	_____
<b>TOTAL AMOUNT DUE:</b>	\$ _____	_____

I, _____ <i>Print Vessel Program Coordinator Name (First &amp; Last)</i>	
have verified that the information provided on this form is accurate, and by signing below approve, authorize and direct payment on behalf of the Tribe, as noted on this form.	
<b>VESSEL PROGRAM COORDINATOR SIGNATURE*</b> _____	<b>DATE</b> _____

I, \_\_\_\_\_  
*Print SDOT Project Manager Name (First, Last)*

have verified that the information provided on this form is accurate and approve the form by signing below.

Is this reimbursement approved?     YES     NO

If no, comments are as follows:

\_\_\_\_\_

SDOT Project Manager Signature\* \_\_\_\_\_ Date \_\_\_\_\_

Indicate estimated date for check delivery/pick up: \_\_\_\_\_

**\*By submitting and signing this form, the signatories agree to the following:**

- The lost fishing time occurred as a result of Elliott Bay Seawall Project activities.
- This form will be considered the invoice for reimbursement to the Tribe, and payment made according to the terms of **AGRMT #.**

**The Tribe authorizes and directs invoice amount to be made to the following:**

\_\_\_\_\_

Print Name (First, Last)

\_\_\_\_\_

MIT Fishing ID #

\_\_\_\_\_

**Total invoice amount to be paid:**

\$ \_\_\_\_\_

**Attachment E  
Invoice Template**

Date: XX/XX/13

TO:  
City of Seattle  
Department of Transportation  
PO Box 23996  
Attn: Accounts Payable  
Seattle, WA 98124-4996

Invoice number: XXX  
For the period: XX/XX/13thru XX/XX/13

**Project: Elliott Bay Seawall Replacement Project**



<u>Billing Summary by Task</u>	<u>This Invoice</u>
A. Vessel Coordination Program	\$0.00
B. Net/Gear Replacement Stockpile	\$0.00
Total All Tasks	\$0.00
<b>TOTAL AMOUNT DUE THIS INVOICE</b>	<b>\$0.00</b>