

NATURAL RESOURCES CONTRACT

This Contract is entered into on the Colville Reservation between the Confederated Tribes of the Colville Reservation (the “Tribes”) and [REDACTED] (the “Contractor”), located at the Simpson Lakes Project Area, Inchelium, WA 99138

1. Description of Work to be Performed

- 1.1. In accordance with this Contract and the Contract Documents the Contractor will perform the work set forth in the following Exhibits:
 - 1.1.1. Exhibit A – Bid Sheet
 - 1.1.2. Exhibit B – Scope of Work/Budget & Payment Schedules
 - 1.1.3. Exhibit C – Maps
 - 1.1.4. Exhibit D – Insurance Documents
 - 1.1.5. Exhibit E – Work Plan
 - 1.1.6. Exhibit F – Debarment Certification
- 1.2. This Contract and the Contract Documents requires the Contractor to perform all work and procedures necessary for the proper execution of the project even if such work or procedures are not expressly set forth in the Contract or the Contract Documents.

2. Contract Price

- 2.1. The Tribes will pay the Contractor for all services it renders in carrying out its obligations under this Contract in an amount not to exceed \$ [REDACTED].
- 2.2. The Contractor agrees that this Contract Price is adequate to perform this Contract.
- 2.3. The price for specific designated items will be negotiated by the Tribes' Contract Officer Representative and the Contractor's Representative utilizing the rate structure and method set out in the Exhibits to this Contract. In no event will the combined total for all items negotiated under this Contract exceed the total Contract Price.

3. Payments

3.1. Method of Payment. *[Choose only one Option]*

OPTION 1: Lump Sum Payment. *[For all contracts of 30 days' duration or less or by agreement]*

OPTION 2: Monthly Invoicing. *[For contracts over 30 day's duration or by agreement]*

OPTION 3: Invoicing Based on Benchmark or Phase of Work. *[For contracts over 30 day's duration or by agreement]*

3.2 Timely Submission of Invoices.

- 3.2.1. The Contractor acknowledges that untimely submission of invoices creates administrative problems for the Tribes. The Contractor agrees to submit invoices as soon as reasonably possible, but in no case later than 60 days after the completion of work under the Contract, the end of the month being billed for, or the completion of the benchmark or phase of work being billed for.
- 3.2.2. If the Contractor fails to submit an invoice within 90 days of the completion of work under the Contract, the end of the month being billed for, or the completion of the benchmark or phase of work being billed for, the Tribes may determine the invoice to be void and refuse payment.

3.3. Payment of Invoices

- 3.3.1. ***When Invoice is Paid; Supporting Documentation; Approval.*** The Tribes will pay the amount invoiced within 30 days of the date the Tribes receives and approves a proper

invoice requesting payment. The Contractor will provide such other documentation as is requested by the Tribes to support the request for payment. An invoice will not be deemed approved until all such documentation has been received. In the case of an Option 3 Contract under Section 3.1, the invoice must identify the benchmark or phase of work described in the statement of work under Section 1.1.

3.3.2. *Limitation on Total Payments.* The total amount invoiced must not exceed the Contract Price stated in Section 2.

3.3.3. *Withholding Payment.* The Tribes may withhold any payment to be made and may terminated this Contract if:

- A. The work is found to be defective and the defect is not timely remedied;
- B. The Contractor has not made all proper payments to subcontractors;
- C. The Contractor has not made all proper payments for labor, materials, or equipment furnished to the Contractor;
- D. Another person or entity is damaged by an act for which the Contractor is responsible;
- E. Claims or liens are filed on the job;
- F. In the opinion of the Tribes, the Contractor's work is not consistent with the terms of this Contract;
- G. The Contractor fails to comply with any applicable law or regulation, or to pay any applicable tax, fee, or license; or
- H. The Contractor has otherwise defaulted in the performance of this Contract.

3.3.4. *Final Payment; Waiver of Claims*

- A. *Payment only after Inspection and Certification.* The Contractor will be paid the full Contract Price only after all work under this contract has been completed and the Contract Officer inspects all work and certifies it as complete and conforming with the terms of this Contract.
- B. *Payment of Withheld Amounts.* The final payment made by the Tribes will include all amounts previously withheld excluding amounts retained for cause under Section 3.3.3.
- C. *Waiver of Claims*
 - (1) By making final payment, the Tribes waives all claims except those arising out of:
 - (i) Faulty work appearing after substantial completion has occurred;
 - (ii) Work that does not comply with the Contract Documents;
 - (iii) Any outstanding claims of liens; and
 - (iv) The Contractor's failure to comply with any special guarantees required by this Contract or the Contract Documents.
 - (2) The Contractor, by accepting final payment, waives all claims except those previously made in writing and remaining unresolved at the time final payment is accepted.

4. Performance Bond or Retainage. *[Applies only to Option 2 Contracts that are equal to or more than \$10,000]*

If this Contract is an Option 2 or Option 3 Contract pursuant to Section 3.1 and the Contract Price equals or exceeds \$10,000, the Contractor must either provide a performance bond for the full Contract Price guaranteeing the faithful performance of this Contract or agree to a retainage of 20% of the Contract Price, which will be released to the Contractor upon completion of this Contract. If the Performance Bond option is selected the bond must be provided before the performance of any work under this Contract.

[Check only one box below]

The Parties agree that Contractor will secure a Performance Bond instead of all retainage.

The Parties agree that the Tribes will retain 20% of the Contract Price instead of Contractor obtaining a Performance Bond.

5. **Starting and Completion Dates.** The Contractor shall begin work under this Contract as soon as reasonably possible after the effective date of this Contract and will complete the work no later than Dec. 15, 2024.
6. **Time of Essence; Extension of Time.** All times for performance set out in this Contract and the Contract Documents are of the essence. The Contractor will schedule and perform all work under this Contract to complete the work within the time required by this Contract.
7. **Contract Documents; Complete Agreement.**
 - 7.1. This Contract and the Contract Documents, on which the Contract is based, represent the entire agreement between the parties. The Contract Documents are as follows:
 - 7.1.1. This Contract together with any supplementary agreements, terms, and conditions that labeled as exhibits or attachments to this Contract; and
 - 7.1.2. Any amendments or modification under Section 8.
 - 7.2. The terms and conditions of these Contract Documents will supersede any and all prior or contemporaneous discussions, understandings, or agreements between the parties regarding the subject matters of this Contract. The Contractor acknowledges that the Contract Documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work by the Contractor, and all terms and conditions of payment.
 - 7.3. If this Contract conflicts with any Contract Document or any other document attached to the Contract, the terms of this Contract will govern.
8. **Contract Modification or Amendment.** No amendment or modification to this Contract will be effective unless it is in writing and signed by an authorized representative for all parties.
9. **Assignment.** Except with the prior written consent of the other party, neither party may transfer, including by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, or operation of law, (1) any discretion granted under this Contract, (2) any right to satisfy a condition under this Contract, (3) any remedy under this Contract, or (4) any obligation imposed under this Contract. Any purported transfer in violation of this Section 9 will be void.
10. **Subcontractors.** The Contractor may hire or engage one or more subcontractors to perform any or all of its obligations under this Agreement if:
 - 10.1. The Contractor uses the same degree of care in selecting any such subcontractor as it would if such contractor was being retained to provide similar services to the Contractor;
 - 10.2. The Contractor provides notice to the Tribes at least 30 days prior to the subcontractor beginning work under this Contract. If the Tribes objects to the subcontractor it will provide written notification of the objection within 15 days of receiving the notice in which case the Contractor must engage another subcontractor, provided that this requirement will not apply if the use of a particular subcontractor is stated within the Contract Documents; and
 - 10.3. The Contractor will in all cases remain responsible for all of its obligations under this Contract.
11. **Termination**
 - 11.1. Termination for Default

- 11.1.1. If a party defaults in performance of this Contract the other party may terminate this Contract without prejudice to any other remedy that the non-defaulting party may have. The non-defaulting party must give the defaulting party 15 days' written notice of the non-defaulting party's intention to terminate this Contract, within which time the defaulting party may cure the default condition to the satisfaction of the non-defaulting party.
- 11.1.2. If the defaulting party is the Contractor, the Tribes may, under Section 3.3.3, withhold any portion of the Contract price still owing at the time of default.
- 11.2. Termination for Convenience
 - 11.2.1. The Tribes may terminate this Contract for its convenience without cause. If the Tribes elect to terminate under this subparagraph, the Tribes will give the Contractor 15 days' written notice of the termination. The Tribes will pay for all work properly completed up to the effective date of the termination.
 - 11.2.2. If this Contract is terminated under Section 11.2.1, the Contractor will have no additional rights as against the Tribes except for the payment provided under this section.
- 11.3. Termination for Changes in Funding
 - 11.3.1. The Contractor acknowledges that this Contract is funded from appropriated funds or federal funds. If those funds are reduced or eliminated, the Tribes may terminate or modify this Contract to reflect the change in funding.
 - 11.3.2. If this Contract is terminated under Section 11.3.1, the Tribes will pay the Contractor for all work properly completed up to the effective date of termination. Any modifications or amendments required as a result of the provisions of this Section will be processed under Section 8.

12. Indemnification

- 12.1. The Contractor agrees to indemnify and hold harmless the Tribes and its officers, agents, and employees from and against all claims, damages, losses, and expenses related to or arising from the Contractor's work and activities under this Contract.
 - 12.1.1. "Expenses" include reasonable attorneys' fees if it is necessary for the Tribes to commence or defend an action arising out of, or associated in any way with, the Contractor's performance of this Contract in any way.
 - 12.1.2. "Claims" include, but are not limited to, claims for bodily injury, illness or death, property damage (including loss of use, or other damage) which are caused in whole or part by the Contractor's negligent act or omission, or that of the Contractor's subcontractor, or that of anyone employed by them or for whose acts the Contractor or the Contractor's subcontractor may be liable.
- 12.2. Except as set out in Section 12.1, each party is responsible for damages to persons and property arising out of that party's actions and the actions of any subcontractor, agent, or employee retained under this Contract.

13. Governing Law; Venue

- 13.1. This Contract and any dispute arising from it will be governed exclusively by, and construed exclusively in accordance with, the laws of the Confederated Tribes of the Colville Reservation.
- 13.2. The Colville Tribal Court has sole and exclusive jurisdiction to adjudicate any dispute that may arise related to this Contract. The Contractor consents to the jurisdiction of the Colville Tribal Court and waives any right it may otherwise have to challenge jurisdiction or the appropriateness of the forum, whether on the basis of *forum non conveniens* or otherwise.

14. Tribal Employment Rights Ordinance

- 14.1. The Colville Tribal Employment Rights Ordinance (“TERO”), chapter 10-1 of the Colville Tribal Law and Order Code, applies to any work performed under this Contract on or near the Colville Reservation, including: (1) A TERO fee of 5% of the total gross contract price if this Contract is for \$5,000 or more (provided the Contractor is not a preference certified entity or otherwise exempt from the TERO fee); and (2) A TERO Utilization Plan.
- 14.2. Work cannot begin until a TERO Utilization Plan has been signed, approved, and filed with the TERO Office.

15. Contract Officer; Representatives

- 15.1. Dorthey Zacherle is the designated Contract Officer for the purpose of this Contract and will provide general administration of the Contract as the Tribes’ representative.
- 15.2. The designated Contract Officer Representative for the purpose of this Contract is **Barry Coles/Levi Simmons**. The Contract Officer Representative will provide specific administration of the Contract as the Tribes’ representative, and will have authority to initiate Change Orders, including approval of compensation and expense payments.
- 15.3. The Contractor’s representative for this project is [REDACTED]. The Contractor’s representative will be responsible for the conduct of the work completed under this Contract and will have signature authority for the Contractor for all matters related to this Contract.

16. Authority of Contract Officer

- 16.1. Specific Administration of Contract;
- 16.2. Inspections, Opinions, and Progress Reports: The COR will keep familiar with the progress and quality of the work by making periodic visits to the work site. The COR will make general determinations as to whether the work is proceeding in accordance with the contract. Neither the Tribes or the COR will be responsible for the Contractor's failure to perform the work properly and in accordance with the contract documents.
- 16.3. Access to Worksite for Inspection: The COR will be given free access to the work site at all times during the contract period. However, the COR is not required to make exhaustive or continuous onsite inspections to perform the duty of checking and reporting on work progress.
- 16.4. Interpretation of Contract Documents: The CO will be the interpreter of the contract document requirements and will make decisions on claims and disputes between the Contractor and the Tribes.
- 16.5. Rejection and Stoppage of Work: The COR will have authority to reject work which in his or her opinion does not conform to the contract documents, and in this connection, to stop the work or payments or a portion thereof when necessary to insure Contractor’s performance is in accordance with the terms of this Contract.

17. Responsibilities of the Tribes

Any instructions given the Contractor by the Tribes will be given through the COR or his or her designee and the Tribes will furnish all necessary surveys and easements which may be required for Contractor to complete the job. The Tribes reserves the right to let other contracts in connection with the project. Contractor will cooperate with all other contractors to the effect that their work shall not be impeded by Contractor’s work, and shall give them access to the work site necessary to perform their contracts.

18. Responsibilities of Contractor

- 18.1. Responsibility for and Supervision of the Contract: Contractor represents that he or she has inspected and is familiar with the work site and the local conditions under which the work is to be performed. Contractor shall be solely responsible for all work under this Contract, including the techniques, sequences, procedures, and means for coordination of all work. Contractor shall

- properly supervise and direct the work of his or her employees and subcontractors, and shall give all attention necessary for such proper supervision and direction.
- 18.2. Discipline and Employment: Contractor shall maintain at all times strict discipline among his or her employees, and agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed. No illegal drugs or alcohol shall be permitted on any worksite by the Contractor, and no employee or subcontractor will be allowed to work if found to be under the influence of illegal drugs or alcohol. Failure to comply with this paragraph is grounds for immediate termination of this Contract.
 - 18.3. Furnishing of Labor, Materials, etc.: Contractor shall provide and pay for all labor and equipment, including but not limited to tools, equipment, machinery, transportation, and all other facilities and services necessary for the proper completion of the work on the project in accordance with the contract documents.
 - 18.4. Payment of Taxes, Procurement of Licenses and Permits: Contractor shall pay any taxes required by law in connection with work on the project and shall secure all licenses and permits necessary for proper completion of the work, paying the fees therefore.
 - 18.5. Compliance with Laws and Regulations: Contractor shall comply with all applicable laws and ordinances, and rules, regulations, or orders of all public authorities relating to the performance of the work herein. If any of the contract documents are at variance therewith, he or she shall notify the Contract Officer promptly on discovery of such variance.
 - 18.6. Responsibility for Negligence of Employees and Subcontractors: Contractor assumes full responsibility for acts, negligence or omissions of all his or her employees on the project, for those of his or her subcontractors and their employees, and for those of all other persons doing work under a contract with him.
 - 18.7. Warranty of Fitness of Work, Equipment and Materials: Contractor represents and warrants to CCT that all work done under this Contract and equipment and materials used in the work and made a part of any structure, or placed permanently in connection with any structure, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood between the parties hereto that all equipment and materials that are not so in conformity are defective.
 - 18.8. Clean Up: Contractor agrees to keep the work premises and adjoining ways free of waste materials and rubbish caused by his or her work or that of subcontractors. He or she further agrees to remove all such waste materials and rubbish caused by his or her work or that of subcontractors. He or she further agrees to remove all such waste materials and rubbish on termination of the project, together with all Contractor's tools, equipment, machinery and surplus materials, and to dispose of all waste, lubricants, and all other substances only in approved containers at authorized disposal sites.

19. Reporting. The Contractor will report to the Contract Officer Representative or as requested by the Contract Officer Representative. Reports may be made in writing or by fax, teleconference, e-mail, or other means, as directed by the Contract Officer.

20. Independent Contractor. The Contractor acknowledges that it is operating as an independent contractor and it is not an officer, employee or agent of the Tribes. No employee-employer relationship is established by this Contract and the Contractor does not have any of the rights or privileges associated with employment by the Tribes. As an independent contractor the Contractor must:

- 20.1. Comply with all applicable laws and regulations;
- 20.2. Pay all applicable taxes and other assessments; and
- 20.3. Hold the Tribes harmless from the consequences of any of the Contractor's or its employees' or agents' acts or omissions of whatever kind or nature; and
- 20.4. Be responsible for reporting any income from this Contract to the applicable federal and state agencies, and is responsible for all taxes associated with this income.

21. Insurance

- 21.1. **Contractor's Liability Insurance:** Contractor agrees to keep in force at Contractor's expense during the entire period of construction on the project such liability insurance as will protect him from claims under workman's compensation, and other employee benefit laws for bodily injury and death, and for property damage that may arise out of work under this Contract, whether directly or indirectly by Contractor, or directly or indirectly by a subcontractor. Such insurance shall include contractual liability insurance applicable to Contractor's obligations under this Contract. Proof of such insurance shall be filed by Contractor with CCT within a reasonable time after execution of this Contract and prior to the commencement of work by the Contractor.
- 21.2. **Worker's Compensation:** All contractors must either provide evidence of an independent workers compensation insurance policy in place for all employees of the contractor or must participate in the Tribes' workers compensation program. In the event Contractor elects to participate in the Tribes' program, Contractor must provide a list of all employees and subcontractors to the Benefits Office and must fill out all required forms prior to commencement of any work under this Contract. Contractor agrees that workers compensation premiums will be deducted from each payment made to Contractor until all premiums have been paid. Evidence of compliance with this Section will be attached to this contract in the form of a Benefits sign off sheet.

22. Correcting Work

When it appears to Contractor during the course of this Contract that any work does not conform to the provisions of the contract documents, he or she shall make necessary corrections so that such work will so conform. In addition, the Contractor will correct any defects caused by faulty materials, equipment, or workmanship in work supervised by the Contractor and shall make necessary corrections so that such work will conform to the provisions of this Contract and the contract documents.

- 23. Records.** The Contractor must maintain adequate financial records, in accordance with generally accepted accounting practices, such that the Contractor can clearly and easily identify all claimed costs and expenses and the relatedness of those costs and expenses to this Contract.

24. Embezzlement

- 24.1. Any officer, director, agent, employee or other person connected in any capacity with this Contract or any subcontract hereunder who embezzles, willfully misapplies, steals or obtains by fraud any of the money, funds, assets or property provided through this Contract may be subject to federal and tribal criminal prosecution and may be fined up to \$10,000 or imprisoned for up to two years, or both if convicted.
- 24.2. The Contractor agrees to insert Section 19.1 into all subcontracts.

- 25. Non-Discrimination.** The Contractor agrees to the comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

- 26. Warranty of Special Expertise.** The Contractor warrants that its employees, subcontractors, and anyone associated with it who will be involved in the performance of this Contract has the educational credentials, expertise, and training required to accomplish the purposes of this contract.

- 27. Compliance with Applicable Law.** The Contractor agrees that it will comply with all laws and regulations required by the Contract and all other applicable tribal, state, and federal laws.

- 28. **Drug and Alcohol Free Workplace.** The Contractor must at all times when within the jurisdiction of the Tribes maintain a drug and alcohol-free workplace, and will take reasonable steps to insure that no employees of, nor subcontractors of the Contractor are allowed to work while under the influence of illegal drugs or of alcohol, and that no such illegal drugs or alcohol are allowed at any time at the work site. Failure to comply with this paragraph is grounds for immediate termination of this Contract.

- 29. **Captions.** Any captions used in this Contract are for convenience of reference only and will not be construed as part of the Contract.

- 30. **No Waiver.** The failure of a Party to object to or to take affirmative action with respect to any conduct of the other Party, which is in violation of the provisions of this Contract, may not be construed as a waiver of that violation or of any future violation of the provisions of this Agreement.

- 31. **Severability.** In case any provision of this Contract is found to be invalid, unenforceable, or in violation of law, it will be deemed stricken and all remaining provisions will continue to be valid and binding upon all parties and this Contract will be construed as if such invalid or unenforceable provision had never been contained herein.

- 32. **Legal Construction.** The parties expressly intend and agree that any legal or equitable principles that might require the construction of this Contract or any provision of it against a single party will not apply in the construction or interpretation of this Contract.

- 33. **Effective Date.** The Effective Date of this Contract is the date on which it is fully executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Contract at Nespelem, Colville Reservation.

Date

Confederated Tribes of the Colville Reservation

Date

Contractor