# LUMMI NATURAL RESOURCES PORTER CREEK RESTORATION PROJECT REQUEST FOR BIDS

6/24/2020

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# Lummi Nation Natural Resources Watershed Restoration Division 2665 Kwina Road Bellingham, WA 98226

# **REQUEST FOR BIDS**

# **Porter Creek Restoration Project**

#### Project No.

The Lummi Nation Natural Resources Department (LNRD) wishes to solicit Proposals for the construction of the Porter Creek Restoration Project, an aquatic habitat restoration project on a tributary to the Middle Fork Nooksack River (Figures 1 and 2). Final design documents are available at the Western Construction Resource Center; instructions are below. LNRD reserves the option to award the project to any contractor. The project is funded by state and federal funds, and will follow this timeline:

June 24, 2020 – Plans and Specifications available at Western Construction Resources (WCR)

July 1, 2020 – Mandatory pre-bid meeting on site with the Project Engineer and the LNRD project manager from 1:00 pm – 2:00 pm. Due to concerns about the Covid-19 pandemic, we recommend only one contactor representative per company attend the site visit. **To submit a proposal, the contractor representative must attend the entire site visit.** 

July 15, 2020 – Proposal due to LNRD office by 1:00pm PDT. Electronic bid proposals are preferred and will be received by LNRD by Nathan Rice at nathanr@lummi-nsn.gov until:

#### 1:00 p.m. PDT, July 15, 2020

Please include a scanned copy of your bid bond (a photo can also work). The bid bond can be mailed and postmarked by July 15. Bids can be submitted in person on July 15 if necessary. Please contact Nathan Rice (360-584-4046; nathanr@lummi-nsn.gov) to make arrangements for pick up. LNRD will send you an email notification that your bid is received, regardless of its delivery method.

The selected contractor will be required to provide a safety plan that includes a COVID-19 safety plan. See the proposed date on Table 1.

Project completion requires the removal of an artificial berm and installation of nine large wood placements in the seasonally dry channel and floodplain of Porter Creek (Figures 1 and 2). Trees for the placements will be salvaged from the berm removal. Equipment and material staging is available at an existing parking area onsite. The selected contractor will clear a temporary access

road into the site. All temporary access roads shall be built to meet Washington State Forest Practice standards.

Porter Creek Alluvial Fan Restoration

The selected contractor will excavate an artificial berm approximately 325 feet long, 45 feet wide, and 8 feet high, requiring approximately 3,900 cubic yards of excavation. Excavated material shall be stockpiled in the staging area. Approximately 500 cubic yards of this material will be used as ballast for large wood placements and floodplain grading. Approximately 3,400 cubic yards of excess berm material will be hauled away by contractor for disposal at a location determined by the contractor.

The selected contractor is responsible for transporting and staging all equipment, tools and supplies needed for large wood placements (including temporary erosion and sediment control (TESC) and work area isolation materials should Porter Creek start to flow). The large wood placement work areas will be accessed by crossing the seasonally dry Porter Creek channel that may begin to flow should unseasonal precipitation occur. Crossing wet channels would require temporarily constructed log bridges. All tracked equipment must use biodegradable fuels and hydraulic fluids. Fueling sites must be at least 100 feet from the edge of the stream channel.

The selected contractor will install nine large wood placements in the dry channels and floodplain of Porter Creek. Each large wood placement will require one large tree to be cut to a length to be determined in the field (between roughly 20 and 50 feet) and partially buried. In addition, several smaller trees and slash material may be added to each placement, depending on site conditions. Tree placement details can be found in the plans. The large wood structures will be backfilled and ballasted with material excavated from the berm. The approximate excavation footprint of the large wood placement will be approximately 10 feet by 10 feet by 3 feet deep but will vary by site. If Porter Creek flows, installation of large wood placements will require isolation from the river channel following TESC and water management standards.

The selected contractor will grade the excavated berm area and adjacent floodplain area to a 3% grade, using minimal fill as necessary to achieve desired grade. The total graded area will be approximately 0.6 acres to approximately the OHWM elevation. Several large wood placements will be installed in the graded floodplain area. The large placements are from felled trees in the project footprint.

Project activities will include but are not limited to:

- 1. Construct the temporary road for equipment through forest lands to access project
  - a. Avoid cutting flagged trees by the project sponsor and landowner.
- 2. Fell approximately 20-26 trees averaging 85 feet tall with DBH between 8 inches and 30 inches, with rootwads intact. Cut felled trees to field fitted lengths between 20 and 50 feet.
- 3. Clear approximately 135 trees with DBH less than 8 inches and brush from approximately 0.6 acres.
- 4. Remove artificial berm material down to approximately OHWM elevation.
- 5. Haul excess berm material off-site for disposal.

- 6. Cross the creek channel in identified locations. Simple log crossings may be required if Porter Creek starts to flow.
- 7. Be prepared to isolate in-channel work areas should Porter Creek start to flow.
- 8. Excavate native alluvium within the main channel and floodplain using excavators and other equipment to install nine large wood placements.
- 9. Backfill the excavated material onto large wood placements as ballast.
- 10. Handle and place logs up to 30-inch diameter by 50-foot long with rootwads in accordance with the Project Engineer's design to install large wood placements within the excavated areas.
- 11. Utilize erosion and disturbance control measures associated with project permits.
- 12. Distribute additional felled trees and slash across restored area.
- 13. Decommission the road upon project completion.

The Contractor may need large equipment such as Class 400 log loaders, Class 400 excavators with bucket and thumb, a D8N bulldozer (or larger), a D5 or D6 Cat, and dump trucks to perform the above described work.

The project has timing restrictions and will need to be staged and removed between August 1 and September 30. Work coming in contact with water will likely need to be completed between August 1 and September 15, depending on the WDFW fish window. The project will need to be closely coordinated with the local land Contracting Agencies – Lummi Nation and WDNR. All permits will be secured prior to project implementation.

Table 1. The anticipated project schedule. These dates are subject to change based on when all permits have been received.

Activity	Date to be completed
Contractor under contract	7/30/2020
Contractor-provided Covid-19 prevention plan	7/30/2020
Pre-project planning meeting at LNRD	8/6/2020
Submittals (TESC plan, water management plan and SWPPP)	8/10/2020
Mobilization	8/14/2020
Temporary access route construction	8/18/2020
Tree felling in berm removal area and grading area	8/20/2020
Start berm removal	8/21/2020

Start hauling berm material for disposal	8/24/2020
Start installing large wood placements in floodplain and/or channel (depending on when creek goes dry)	8/24/2020
Grade berm removal area in floodplain	8/27/2020
Distribute salvaged trees and slash across graded floodplain area	8/27/2020
Walk-through with Project Engineer and contractor	8/28/2020
Decommission roads	9/1/2020
Demobilization	9/3/2020

The contract award is based on experience working in sensitive aquatic environments, record of permit compliance (no official permit violations in the last five years), bid total cost, proposed methods, contractor availability, contractor qualifications, and Native Preference factors. Lummi Nation will provide permits and engineering as needed and environmental compliance authority. The LNRD also requests that the contractor provide the proposed project schedule in their bid, including estimated timing for berm removal and each large wood placement installation. LNRD is securing the following permits for the project, with expected date of approval included:

- 1. SEPA Determination of Nonsignificance (Skagit County), June 25, 2020
- 2. Whatcom County Shoreline Exemption, June 30, 2020
- 3. Floodplain Development permit (Whatcom County), June 30, 2020
- 4. Nationwide permit (USACOE), June 30, 2020
- 5. Hydraulic Projects Approval (WDFW), July 8, 2020
- 6. DNR Fire Waiver, July 8, 2020

The Indian Preference Policy of Lummi Nation entitles qualified applicants who are enrolled tribal members of federally recognized Indian tribes, or qualified businesses owned by enrolled tribal members of federally recognized Indian tribes, to first consideration for contracts. Bidders for contracts who are not entitled to claim such preference or who fail to claim it shall be considered without regard to ethnic/national origin, gender, marital status, sexual orientation, religion, and age or disability status. Indian Preference will apply only to bids that are within 110% of the lowest bid submitted by a qualified bidder not claiming Indian Preference.

Unless otherwise specified, all project work shall be in accordance with the Special Provisions, the 2018 Standard Specifications for Road, Bridge, and Municipal Construction (WSDOT/APWA), including agreed upon amendments thereto, and Plans hereunder. If the contract is awarded, the award will be in accordance with the Standard Specifications, Section 1-

03, "Award and Execution of Contract", except as provided for hereunder and in the "Instructions to Bidders."

Electronic plans and specifications may be obtained via WCR Publications (2215 Midway Lane, Suite 208, Bellingham, WA 98226, Phone 360-738-0370 (www.wcrinc.com and www.myplancenter.com)) without charge. **Contractor shall request to be on the plan holders list** before being able to access the plans and specifications online. A copy of plans and specifications is also available for review at the LNRD office by pre-arrangement, depending on Washington State Stay-at-Home restrictions

Contact Nathan Rice at LNRD: phone (360) 584-4046 for general questions or to view the copy at the LNRD office. LNRD will not be providing pre-bid copies of the plans or contract bid documents. Technical questions are to be directed to Nathan Rice and will be distributed to the Project Engineer.

#### • NOTICE TO BIDDERS

LNRD reserves the right to accept a proposal of the bidder submitting the lowest responsible bid, to reject any or all bids, republish the call for bids, revise or cancel the work to be performed, or do the work otherwise, if the best interest of LNRD is served thereby. LNRD also reserves the right to postpone the bid award for thirty (30) calendar days after bid opening, except that upon mutual consent of the lowest responsible bidder and LNRD, the 30-calendar day limit may be extended to allow approval of the bid award. A scoring system will be to rank each proposal based on the following:

- Cost and associated construction schedule (35%)
- History of similar projects within 5 years (20%)
- Positive References (based on communication, following design specs, efficiency, compliance, and safety) (20%)
- Compliance and safety measures (10%)
- Native preference (15%)

The Lummi Nation Tribal Employment Rights Ordinance (TERO) applies to this project. All contractors bidding this project shall thoroughly familiarize themselves with the TERO requirements. The Contractor and Subcontractors are subject to compliance with the LIBC Alcohol and Drug Free Workplace Policy.

#### SUPPLEMENTAL INSTRUCTIONS TO BIDDERS

PREPARATION OF PROPOSAL

Each bid proposal shall be submitted on the forms included in the "Bid Proposal Forms" section following: All blank spaces on the forms shall be completed in ink or be typewritten. Any omission of prices for items included on the Bid form, or any addition in writing to the form of the bid proposal or any condition, limitation or provision not officially invited in these contract documents may render the proposal as incomplete or modified and may become cause for rejection of the bid.

The unit or lump sum price for each item, and the total bid price shall be shown in numbers. The extended unit price for each bid item shall be shown in numbers. All bid prices shall be shown in the designated locations under the corresponding headings on the "Bid" form. The unit, extended unit, or lump sum price for each bid item shall include as shown on the "Bid" form complete under each heading all costs for labor, materials, tools, equipment, overhead, and profit. No additional compensation for these items shall be allowed except through an approved change order as provided for in these contract documents.

The sum shown for the Bid 'Total' (total bid price) shall be the amount for which the Bidder offers to perform, and which the bidder agrees to accept for the work described in these documents. At the option and direction of LNRD, work may be added or deleted in accordance with the contract provisions hereunder.

Bidders shall fill in and complete the information requested on the "Statement of Bidder Identification" form, including address and telephone number. The Bidder is to include in the form the legal name under which the firm or bidder is registered.

Bid proposals shall be signed in full by the person or persons legally authorized to bind the bidder to a contract. A bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A bid submitted by an agent shall have attached a current power of attorney certifying the agent's authority to bind the Bidder. The name of each person signing shall be typed or printed below the signature.

#### **MANDATORY PRE-BID MEETING**

All bidders must drive separately and maintain 6 feet social distance per Washington State mandatory state-at-home measures. All bidders must wear a mask while onsite. These Covid-19 regulations may change and any revisions will be communicated to prospective bidders.

We will meet at the parking area north of the Porter Creek bridge on Mosquito Lake Road. This is located approximately 4.7 miles from the intersection of Mount Baker Highway and Mosquito Lake Road (Welcome Grocery Store), and approximately 0.8 miles north on Mosquito Lake Road from the Mosquito Lake Road Bridge over the Middle Fork Nooksack River (Figure 1). We will visit the project area. Prospective bidders must call or email Nathan Rice, LNRD: 360-584-4046 (cell), or <a href="mailto:nathanr@lummi-nsn.gov">nathanr@lummi-nsn.gov</a> by 5:00pm, June 30, 2020 to RSVP.

Prospective bidders are required to attend the entire site visit. You must be on time or that may be grounds for an ineligible bid. Please call Nathan Rice (360-584-4046) if you will arrive late to the site visit.

#### **SUBMITTAL OF PROPOSAL**

The completed Bid Proposal Forms consisting of pages 2 through 16, and any other documents required in accordance with the Special Provisions shall be emailed to Nathan Rice at

<u>nathanr@lummi-nsn.gov</u> with the subject line, "Porter Creek Restoration Project proposal" by 1 pm PDT on July 15, 2020.

Please include a scanned copy of your bid bond (a photo can also work). The bid bond can be mailed and postmarked by July 15, 2020. Bids can be submitted in person on July 15, 2020 if necessary. Please contact Nathan Rice (360-584-4046; nathanr@lummi-nsn.gov) to make arrangements for pick up. LNRD will send you an email notification that your bid is received, regardless of its delivery method.

There will be no public bid opening per Washington State mandatory stay-at-home measures. However, LNRD will email the total bid amount of each bid to all bidders. The scoring sheet may also be provided per request. These bid delivery instructions may be revised prior to the closing date if the Washington State Stay-at-Home ordinance is lifted. Any revisions to the bid delivery process will be communicated to all prospective bidders.

No verbal or telephonic bids or modifications will be considered.

#### INTERPRETATIONS AND CORRECTIONS

If the Bidder finds any discrepancy in, or omission from the specifications or plans, or if there is any doubt as to their meaning, the Bidder shall promptly notify Nathan Rice of LNRD (360-584-4046, <a href="mailto:nathanr@lummi-nsn.gov">nathanr@lummi-nsn.gov</a>). Any addenda issued during the time of bidding will be numbered consecutively and will be incorporated into these contract documents. The Bidder shall be responsible to ascertain prior to submittal of a bid proposal that all addenda issued have been received, and are acknowledged on the "Bid Proposal Signature and Addendum Acknowledgment" form. Addenda will only be issued to those contractors appearing on the Plan Holders List held by WCR Publications. It will be the responsibility of the contractor to ensure their name appears on the Plan Holders List.

#### **CONSIDERATION OF BIDS**

Bid proposals will be received at the time and place indicated in the "Invitation to Bid" or in an addendum, unless LNRD has withdrawn the request for bids. In the event of any discrepancies, the amount shown in words shall have precedence, an item's unit price shall have precedence over the item extended unit price, and the arithmetic sum of the extended unit and lump sum prices shall have precedence over the total amount of bid. Any alteration or erasure shall be initialed by the Bidder for the proposal to be considered.

If no responsive proposals by a qualified Indian-owned economic enterprise or Indian organization are within the range specified in the procurement policy, then the contract shall be awarded to the responsible person or entity whose proposal is the most advantageous to the Lummi Nation, with qualifications, price, and other factors considered, provided that the price is within the maximum total contract price established for the specific property or activity.

Bidders are notified that all bids are likely to be rejected if deemed in the best interests of LNRD. In the event all bids are rejected, this project may be deferred for re-advertising for bids until a more competitive situation exists.

#### **EVIDENCE OF QUALIFICATIONS**

Bidders shall complete the statement of Bidder Identification and Qualification in the Bid Proposal. Bidders shall provide satisfactory evidence of financial resources and experience in similar projects. This qualification includes (See also Special Provisions):

- List and qualifications of all subcontractors. All must be registered in SAM and have a DUNS #
- Contractor Project Manager, who will be onsite during all construction, his/her experience (must not be equipment operator). Contractor Project Manager must have experience managing river restoration projects and an understanding of WSDOT specifications and permit requirements for these types of projects.
- Other key project staff. Include staff organization chart.
- Description of three similar projects within the last five years with reference information
- Proposed methods for water crossings, berm removal, and floodplain grading.
- Current and projected workload during the summer of 2020 to complete project
- Equipment availability
- Native subcontractor and worker elements
- Bid Bond
- Bid total costs

Upon request of LNRD, a Bidder may be requested to submit supplementary information or clarification of qualifications.

Among the requirements to perform the project are:

- Contractors will be fully licensed and bonded and comply with all state and federal worker safety and benefits regulations.
- Contractors will add the Contractee, Natural Systems Design, Washington State Department of Natural Resources, and Whatcom County as Additional Insured Parties for a minimum limit of \$3,000,000 Liability, including Loggers Broad form Insurance which will be specified during the contracting process.
- Performance Bonds of 100% of Contract Amount will be required of successful proponents.

These contracts are covered under the provisions of the Davis-Bacon Act.

#### AWARD OF CONTRACT

The award of the Contract, if it be awarded, shall be made within thirty (30) calendar days after the date of opening of bids to the lowest Bidder deemed responsible by LNRD, as provided for herein, except that upon mutual consent of the lowest responsible Bidder and LNRD, the thirty (30) calendar days may be extended.

#### **EXECUTION OF CONTRACT**

The successful Bidder shall execute and return the contract within five (5) calendar days after bid award. A certificate of insurance satisfying the contract specifications, current W-9 form, TERO Compliance Plan (see https://www.lummi-nsn.gov/Website.php?PageID=628), and

performance bond shall be submitted with the signed contract. Contract is subject to the approval of the Lummi Indian Business Council.

#### PRE-CONSTRUCTION CONFERENCE

The successful bidder, prior to commencement of work, shall attend a pre-construction conference with the Project Engineer and LNRD at the LNRD office. The pre-construction conference may be a teleconference if the Washington State Stay-at-Home order is still in effect.

#### **POST-CONSTRUCTION CONFERENCE**

The successful bidder, after completion of project construction, shall attend a post-construction conference with the Project Engineer and LNRD at the LNRD office to review the project and lessons learned. The post-construction conference may be a teleconference if the Washington State Stay-at-Home order is still in effect.

#### **LOCATION**

This project is located on Porter Creek, a tributary to the Middle Fork Nooksack River, where Mosquito Lake Road crosses Porter Creek.

All proposals will be due to the Lummi Natural Resources Office by July 15, 2020 at 1:00 pm. A mandatory pre-bid site tour will be held on 7/1/2020 at the project site. Some latent site conditions may be encountered which affect the cost of the work, but must be accounted for in your quotation. Among the requirements to perform the project is proof of insurance certification.

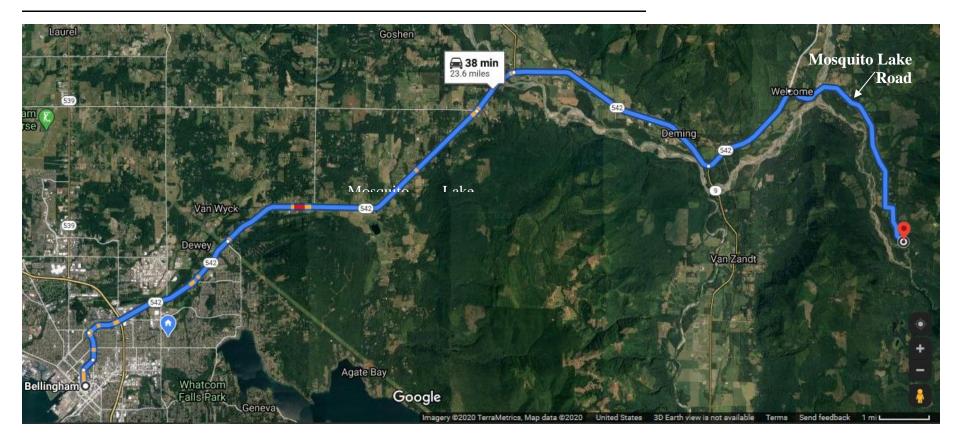
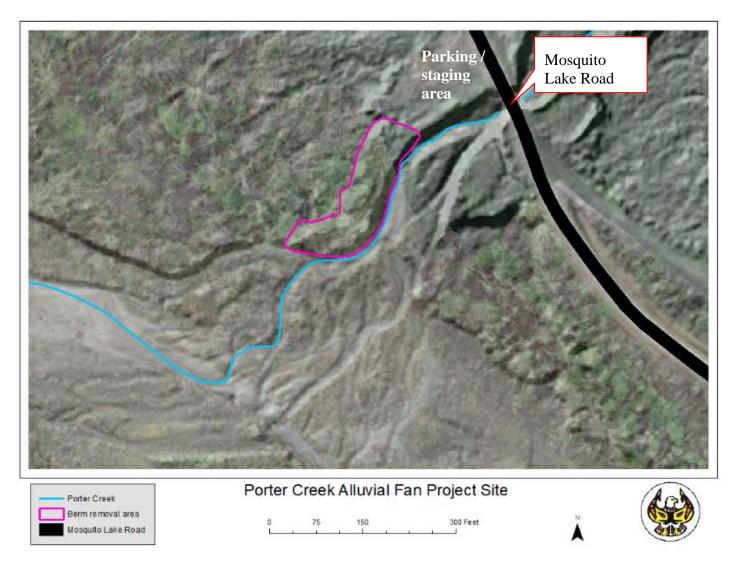


Figure 1. Project Location



**Figure 2.** Project worksite location in existing conditions.

# **BID FORMS**

#### BIDDING CHECKLIST

Bidders must bid on all bid items contained in the Proposal. The omission or deletion of any bid item will be considered non-responsive and shall be cause for rejection of the bid.

Please check to make sure you have accomplished the following:

Has a photo of your bid bond or certified check been enclosed with your bid, and the bond/check sent on time?

Is the amount of the bid guaranty at least five (5) percent of the total amount of the bid?

Has the proposal been properly signed?

Have you bid on ALL ITEMS and one or two SCHEDULES?

Have you completed Statement of Bidder's Qualifications?

Have you certified receipt of addenda?

Have you included the Non-Collusion Declaration?

Have you completed the Subcontractor List?

Have you registered in SAM? SAM information can be found at Sam.gov

#### SUBCONTRACTOR LIST

The **Lummi Nation Natural Resources** requires the bidder to submit the names of all subcontractors whose subcontract amount exceeds 10 percent of the contract price for all contracts exceeding \$100,000. Bidders shall complete **Section A** below as appropriate. Bidders can attach additional sheets as necessary to identify additional subcontractors.

In addition, as required by the Revised Code of Washington 1999 (RCW 39.30.060), bids of \$1,000,000 or more for any public works contract require each bidder to submit the names of the subcontractors who will be performing the work in the areas of heating, ventilation, air conditioning, plumbing (as described in chapter 18.106 RCW), and electrical (as described in chapter 19.28 RCW), or to name itself for the work. Bidders shall complete **Section B** as appropriate. As required by RCW 39.30.0600., if the subcontractor names for Section B are not submitted with the bid, or within 1 hour of the bid time, the bid shall be considered non-responsive (void).

#### A. Owner Required Subcontractor List

The following subcontractor(s) subcontract amount exceeds 10 percent of the contract price and the contract exceeds \$100,000: (list subcontractor and bid item)

#### Select Either:

Bidder certifies that there are no subcontractors at this time who meet the above requirements.

Name		
Title		
Signature		
Or		
There are subcontractors when Bid Item	no meet the above requirements.	
(s)		
Subcontractor Name		
Address		
Phone No.	State Contractor's License No.	
Bid Item (s)		

Subcontractor Name				
Address				_
Phone No.	State Contractor's License No.			
Bid Item (s)				
Subcontractor Name				
Address				_
Phone No.	State Contractor's License No.			
<ul><li>Bidder i</li><li>There is</li></ul>	r exceeds \$1,000,000. Bidder shall income some shall income some shall the shall income some shall the shall income shall the shall income shall be shall income shall be shall income shall be shall be shall income shall be shall	, or	one of the	Tollowing.
Heating		Yes	No	
Bidder is naming themse	lves for the work			
*	ork product related to this item. Any equired during the execution of this ed by the Contractor.			
Bidder is subcontracting following items)	the work (if so, complete the			
Bid Item (s)				
Subcontractor Name				
Name				

Phone No.	State Contractor's Licens No.	se		
Ventilation		Yes	No	
Bidder is naming themselves for the we	ork			
There is no permanent work product re ancillary ventilation work required dur this contract, will be performed by the	ing the execution of			
Bidder is subcontracting the work (if so following items)	o, complete the			
Bid Item (s)				
Subcontractor Name				
Address				
Phone No.	State Contractor's Licens No.	se		
Air Conditioning		Yes	No	
Bidder is naming themselves for the w	ork			
There is no permanent work product reancillary air conditioning work require of this contract, will be performed by the	lated to this item. Any d during the execution			
Bidder is subcontracting the work (if so following items)	o, complete the			
Bid Item (s)				
Subcontractor Name				
Address				

Phone No.	State Contractor's Licens No.	e		
Plumbing		Yes	No	
Bidder is naming themselves for the w	ork			
There is no permanent work product reancillary plumbing work required duri contract, including providing temporar performed by the Contractor.	ng the execution of this			
Bidder is subcontracting the work (if s following items)	o, complete the			
Bid Item (s)				
Subcontractor Name				
Address				_
Phone No.	State Contractor's Licens No.	e		
Electrical		Yes	No	
Bidder is naming themselves for the w	ork			
There is no permanent work product reancillary electrical work required during contract, including providing temporare be performed by the Contractor.	ng the execution of this			
Bidder is subcontracting the work (if s following items)	o, complete the			
Bid Item (s)				
Subcontractor Name				
Address				_

Phone No.	State Contractor's License No.		
Other Type:		Yes	No
Bidder is naming themselves for the v	work		
There is no permanent work product ancillary electrical work required duri contract, including providing temporare be performed by the Contractor.	ing the execution of this		
Bidder is subcontracting the work (if following items)	so, complete the		
Bid Item (s)			
Subcontractor Name			
Address			
Phone No.	State Contractor's Licens No.	e 	
Other Type:		Yes	No
Bidder is naming themselves for the v	work		
There is no permanent work product ancillary electrical work required duri contract, including providing temporar performed by the Contractor.	ing the execution of this		
Bidder is subcontracting the work (if items)	so, complete the following		
Bid Item (s)			

Lummi Nation Natural Resources
Porter Creek Alluvial Fan Restoration

June 2020 Bid Forms

Subcontractor Name		
Address		<u></u>
Phone	State Contractor's License	
No.	No.	

# STATEMENT OF BIDDER'S QUALIFICATIONS

Name of Contractor	
Address	
Phone Number	Fax Number
SAM ID Number	DUNS Number
Washington State Department of I	Labor and Industries Workmen's Compensation Account Number
Washington State Department of I	Licenses Contractor's Registration Number
	Expiration Date
<del>-</del>	s been engaged in the construction business under the present firm
Gross dollar amount of work unde	r contract
Gross dollar amount of contracts n	ot completed
Type of work generally performed	by contractor
	e on-site during all construction)
	nilar nature that have been completed by the Contractor and project and the gross dollar amount of each project:

Project Name	Agency	Contact & Phone	Year	Bid
		Number	Completed	Amount

List of major pieces of equipment which ar required for use on this project:	re owned by the Contractor and which will be available and
Bank References	
Have you changed bonding companies with	thin the last three years?
If so, why? (Optional)	
	client on any public works contract for a special district,
For What Reason?	
Disposition of case, if settled	
Name of Superintendent to be used on the	project and how long with your company
	Bidder
	By
	Title

## **BID BOND FORM**

Herewith find deposit in the form of a certified check, ca \$which is not less than five percent (5	· · · · · · · · · · · · · · · · · · ·
Sign Here:	
BID BOND	
Know all men by these presents, that weandbound unto the Lummi Nation Natural Resources Was	as Principal as Surety, are held and firmly
dollars, for the payment of themselves, their heirs, executors, administrators, success these presents.	f which the principal and the surety binds
The condition of the obligation is such that if the obligee, according to the	
principal therefore, and the principal shall duly make and accordance with the terms of said proposal or bid a performance thereof, with surety or sureties approved by case of failure to do so, pay and forfeit to the obligee the the call for bids, then this obligation shall be null and voi force and effect and the surety shall forthwith pay an liquidated damages the amount of this bond.	ward and shall give bond for faithful y the obligee; or if the principal shall, in penal amount of the deposit specified in d; otherwise it shall be and remain in full
Signed, sealed and dated this day of	, 20
Principal	
Surety	
Return of deposit in the amount of\$	
Date	
B y	

# FAILURE TO RETURN THIS DECLARATION AS PART OF THE BID PROPOSAL PACKAGE WILL MAKE THE BID NONRESPONSIVE AND INELIGIBLE FOR AWARD.

#### NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

- 1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
- 2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.

#### NOTICE TO ALL BIDDERS

To report rigging activities, call: 1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m. eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud, and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

PR	OP	OS	AT.
1 1/	<b>\</b> /\	1 117	$\rightarrow$

Contractor:	
City:	, Washington
Date:	, 20

Lummi Nation Natural Resources 2665 Kwina Rd Bellingham, WA 98226

Pursuant to and in compliance with your invitation for bids and all other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, proposes and agrees to perform, within the time stipulated, the contract, if this project is accepted, including all its component parts and everything required to be performed, and to provide and furnish any and all labor, materials, tools, expendable equipment, an all utility and transportation services necessary to perform the contract, complete, in a workmanlike manner, of all the work covered by the contract in connection with Resources' project, designated as Lummi Nation Natural Resources - Porter Creek Alluvial Fan Restoration all as required by and in strict conformance with the specifications, contract plans and the standard plans for the following unit prices. The undersigned bidder has read and is familiar with TERO.

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# SCHEDULE A OF PRICES (See Special provisions 1-02.16) FOR CONSTRUCTION PER SPECIAL PROVISIONS 1-02.16 TO BE COMPLETED

**SEPTEMBER 30, 2020** 

#### **Lummi Nation Natural Resources Porter Creek Alluvial Fan Restoration Total Price Description** Units Quantity **Unit Price** Item **MOBILIZATION** LS 1 1 =\$ =\$ 2 **TEMPORARY** LS 1 TRAFFIC CONTROL =\$ LS 3 **TEMPORARY** 1 ACCESS AND **STAGING** =\$ =\$ LS 4 **TEMPORARY** 1 **EROSION, SEDIMENT CONTROL** =\$ =\$ SY139 5 **STABILIZED CONSTRUCTION ENTRANCE** 6 **SEEDING AND** 1 **ACRE MULCHING** =\$ =\$ 7 HABITAT TREE LS 1 **PLACEMENT** =\$ =\$ CY8 **BERM EXCAVATION** 3400 AND OFF-SITE **HAULING** (INCLUDES DISPOSAL) 9 **BERM EXCAVATION** CY500 AND ON-SITE DISPOSAL =\$ SUBTOTAL (ITEMS 1-7) =\$ WA State Sales Tax @ 7.9% $=\$_{-}$

TERO Tax @ 5.0%	=\$
TOTAL AMOUNT BID-Schedu	le A =\$

Lummi Nation Natural Resources Porter Creek Alluvial Fan Restoration					
Item	Description	Units	Quantity	<b>Unit Price</b>	Total Price
1	TEMPORARY	LS	1		
	STREAM CROSSING			=\$	=\$
2	TURBIDITY CURTAIN	LF	100	=\$	=\$
3	COFFERDAM AND PARTIAL DIVERSION	LF	100	=\$	=\$
		SUBTOTAL (ITEMS 1)			=\$
		WA State Sales Tax @ 7.9%			=\$
		TERO Tax @ 5.0%			=\$
	TOTAL AMOUNT BID-Schedule B =\$			=\$	

## All bidders shall sign the proposal in the space provided.

The successful bidder shall execute three (3) copies of the attached contract, and performance bond within ten (10) calendar days after the date of award of contract unless a written extension is granted by the Lummi Nation Natural Resources.

We agree to begin work within <u>ONE (1) Calendar Day</u> from the date of the Notice to Proceed, and to proceed so as to complete the project within an agreed upon date mandated by the project Owner. Charged working days will begin when the contractor commences work but no later than <u>ONE (1)</u> Calendar Days after the date of the Notice to Proceed.

The proposal, together with the Contract Documents, Standard Specifications, Special Provisions, Addenda and Plans, when endorsed by the Lummi Nation Natural Resources shall become a contract binding on both parties thereto, whereby the contractor agrees to perform the complete contract work, as specified, and the Lummi Nation Natural Resources agrees to make payment to the contractor, as specified, for said completed and accepted work.

Dated this _		_day of	, 20
Contractor_			
Address			
		License No	
By:			
Title:			
Attest: (If C	_		
Witness: (If	Individual or Partners		
	gement of Receipt of	`Addenda:	
No	Date	Initials	
No.	Date	Initials	

#### MEASUREMENT AND PAYMENT

#### General

It is the intention of the plans that performance of work under the bid items shall result in complete construction, in proper operating condition, of improvements identified. Work and materials not specifically listed in the proposal, but required according to the plans and general practice, shall be included in the Contractor's bid price.

Materials include all mark-up and equipment includes all mark-up for owning, leasing and maintaining the equipment. Unless otherwise stated bid price will be based on unit prices noted or lump sum to complete the project element as shown on the plans.

Unless modified or otherwise specified, the 2018 Edition of the Standard Specifications for Road, Bridge, and Municipal Construction and the Special Provisions are the basis for payment on this project.

# <u>Lummi Indian Business Council</u> <u>Sample Contract Template</u>

Lummi Indian Business Council 2016 Construction Services Contract		
DEPARTMENT: PROGRAM:		
CONTRACTOR: Please include official name of your business:	PROGRAM MANAGER:	
ADDRESS:	FUND#:	
TELEPHONE#:	TYPE OF SERVICES:	
S.S.N. or EIN#:	CONTRACT#:	
	BEGINNING DATE: ENDING DATE:	
SCOPE OF WORK:		
LOCATION:	CONTRACT AMOUNT: \$	
advance of any service rendered. The Contractor shall furn above Scope of Work. The Contractor shall not enter into stobtaining prior written approval of LIBC. Any modifications compensation or to the time required for the contract's per incorporated in a written approved format amendment or dindependent contractor and not an employee. No insurance. The Contractor shall be responsible for all taxes, social sect payments both for Contractor and Contractor's employees. IRS at the end of the fiscal year under the official name of agents and employees, harmless from all suits, claims or liaccount of injuries or damages sustained by any persons of Contractor, its agents or employees pursuant to this contraremuneration for services. The Contractor must provide procummi Indian Business Council as an additional insured in	to this contract including any increase in the amount of formance or any changes in the description of work must be thange order to this contract. The Contractor shall be an e or other employee benfefits will be provided to the contractor. urity payment, state disability insurance and other similar The Lummi Indian Business Council will be filing a 1099 with the your business. The Contractor shall hold LIBC and its officers, abilities of any nature, including costs and expenses, for or on reproperty resulting in whole or in part from activities of the ct, or on account of any unpaid wages, materials or other poof of general liability or professional liability insurance naming the amount specified in The Scope of Work. If the Contractor owe deducted from any payment owing to Contractor, unless there is a	
ACCEPTANCE OF AGREEMENT: Work or Services for this agreement shall not begin from the LIBC Contracts Office, a Commencement	until the Contractor has received a written obligation Letter or Purchase Order.	
Department Director Date	Contractor Date	
General Manager or Council Date Depending which oversees your department	revised form 12/29/11	

(Contractor)

#### PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: THAT whereas Lummi Indian Business Council, a sovereign, federally recognized Indian tribe, has awarded to:

Hereinafter designated as the "Principal" a contract for work items, which contract consists of the Proposal/Agreement, together with the Contract Documents, Specifications, Addenda and Plans, all

Lummi Nation Natural Resources - Porter Creek Alluvial Fan Restoration

as hereto attached and made a part hereof, and more particularly described as:

and whereas said principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract:

NOW, THEREFORE, we the Pr	incipal and		, a
corporation, organized and exis	ing under and by virtu	ie of the laws of the Stat	te of Washington, and
duly authorized to do business	n the State of Washin	gton as surety, are firml	y bound unto Lummi
Nation Natural Resources in	the sum of		
dollars (\$	) lawful money of th	e United States, for the p	payment of which sum
well and truly to be made, we	bind ourselves, our he	eirs, executors, administr	rators, successors and
assigns, jointly and severally, fi	mly by these presents.		

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bonded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in said contract, and shall faithfully perform all the provisions of such contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, at the time and in the manner therein specified; and shall pay all laborers, mechanics, subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work on his or their parts; and shall indemnify and save harmless the LNRD's Engineer, its officers and agents, from any loss or damage occasioned to any person or property by reason of any carelessness or negligence on the part of said principal, or any subcontractor, in the performance of said contract or any modifications thereof; and shall further indemnify and save harmless Lummi Nation Natural Resources, its officers and agents, from any damage or expense by reason of failure of performance as required by said contract, or any modifications thereof, or from defects appearing or developing in the material or workmanship provided or performed under said contract within a period of one year after acceptance thereof by Lummi Nation Natural Resources, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it

does hereby waive notice of any change, extension of time, alternations or additions to the terms of the contract or the work or to the specifications. This Bond is provided pursuant to and shall be construed in accordance with Ch. 39.08 RCW.

IN WITNESS THEREOF, the said Principal and counterparts thereof to be signed and sealed by the	
, 20	
	_
Principal	
Ву	<u> </u>
Title	<u> </u>
ATTEST (If Corporation) Partnership)	WITNESSES (If Individual or
CORPORATE SEAL	
Ву	
Title	
APPROVED AS TO FORM	
Surety	
Ву	By
( Attorney for	)
Address of local office and agent of Surety Company	y is:

#### AMENDMENTS AND SPECIAL PROVISIONS

#### INTRODUCTION

The following Amendments and Special Provisions shall be used in conjunction with the applicable Standard Specifications for Road, Bridge, and Municipal Construction, 2018 English edition, as issued by the Washington State Department of Transportation, hereinafter referred to as the "Standard Specifications".

The Standard Specifications, except as they may be modified or superseded by these Special Provisions, other documents provided by LNRD or applicable Lummi Nation laws and policies, shall apply to all phases of work under this contract, and they are by reference made an integral part of these specifications and contract as if herein fully set forth. In the event there is a conflict between, the Standard Specifications and contract documents or applicable Lummi Nation laws and policies, the contract documents or applicable Lummi Nation laws and policies shall govern.

Also incorporated into these specifications by reference are:

2018 Standard Specifications for Road, Bridge, and Municipal Construction (WSDOT/APWA). In the event there is a conflict between the standard specifications and the contract documents or applicable Lummi Nation Laws and Policies, the contract documents or applicable Lummi Nation Laws and Policies shall govern.

#### **DESCRIPTION OF WORK**

This project provides for construction of Middle Fork Nooksack – Porter Creek Alluvial Fan Restoration Project in accordance with the attached plans, these special provisions and the Standard Specifications.

The project involves the removal of one artificial berm and the installation of nine large wood placements in Whatcom County, WA. This project is intended to restore floodplain connection and aquatic habitat on Porter Creek, a tributary of the Middle Fork Nooksack River.

This project is funded by State and Federal monies; appropriate inclusions have been made to meet those requirements.

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### AMENDMENTS TO THE STANDARD SPECIFICATIONS

The following Amendments to the Standard Specifications are made a part of this Contract and supersede any conflicting provisions of the Standard Specifications. Each Amendment contains all current revisions to the applicable section of the Standard Specifications and may include references which do not apply to this particular project.

# DIVISION 1 GENERAL REQUIREMENTS

This Contract provides for the removal of one artificial berm and the installation of nine large wood placements on Porter Creek, a tributary to the Middle Fork of the Nooksack River. The large wood placements will be installed by excavating native alluvium on cobble bars and placing wood into the empty cavity; excavated alluvium will be placed as backfill over the wood. The wood will be salvaged on site from trees felled during berm removal. All equipment must use biodegradable fuels and hydraulic fluids. Fueling sites must be at least 100 feet from the unvegetated active river channel.

### 1-01 DEFINITIONS AND TERMS

#### • 1-01.3 Definitions

Add the Following:

The following shall replace existing definitions shall prevail in the Standard Specifications:

1. **Contracting Agency,** it is the Lummi Indian Business Council and its officers and employees, particularly the Lummi Nation Natural Resources Department who are responsible for the execution and administration of the Contract.

#### 1-02 BID PROCEDURES AND CONDITIONS

### • 1-02.1 Prequalification of Bidders

Replace the last two sentences of the fourth paragraph with the following sentence:

Such refusal is not conclusive unless the Bidder protests pursuant to the Lummi Indian Business Council, Procurement Policy, VI.G Protest Procedures.

### Add the Following:

A list of similar projects previously completed by Bidder, including contact person with their telephone number, a project description, and date project was completed. Contractor is required to have successfully performed Three (3) projects of similar scope within the last Five (5) years. The contractor shall have no construction permit violations over the past Five (5) years.

Work history of job foreman/superintendent and equipment operator. Contractor is required to staff project with job foreman/superintendent and excavator operator with minimum experience as follows:

1. Five years' experience with similar project work.

2. Five projects within five years greater than \$100,000.

### • 1-02.2 Plans and Specifications

This section is replaced with:

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must submit a request in writing to the Engineer five (5) calendar days before the bid due date. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders by addendum to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

LNRD shall provide one copy of each Contract document (Contract Form, Specifications, Bid Forms and Plans) to Contractor for project bidding purposes. After Contract award, LNRD shall supply Contractor with sufficient numbers of plans and contract documents for construction. Contractor shall make all other copies of Contract documents needed for completion of Contractor's work.

### • 1-02.4 Examination of Plans, Specifications and Site of Work

#### **1-02.4(1)** General

This section is supplemented with the following:

5. All prospective bidders must attend a mandatory site visit prior to bid opening. All plan holders will be notified of the day, time and place of the visit.

### • 1-02.6 Preparation of Proposal

Paragraph five; subparagraph number 1 is replaced with:

1. The Bidder shall list all Subcontractors expected to perform more than five percent (5%) of the contracted work on the bid form. Failure of the Bidder to submit as part of the bid the NAMES of such Subcontractors or to name itself to perform such work shall render the Bidder's bid non-responsive and, therefore, void.

This section is further supplemented with the following:

LNRD encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this invitation or as a subcontractor to a bidder. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

### • 1-02.7 Bid Deposit

Remained at 5%.

### • 1-02.9 Delivery of Proposal

This section is revised to read:

- 1. Each proposal shall be submitted electronically or sealed and submitted in an envelope with the name of the project and Contractor on the outside.
- 2. Any part of the bid proposal or bid modification not received prior to the time specified, per the designated bid clock, will not be considered and the bid will be returned to the bidder unopened.
- 3. People with disabilities who wish to request special accommodation, (e.g., sign language interpreters, Braille, etc.) need to contact LNRD ten (10) working days prior to the scheduled bid opening.

### • 1-02.10 Withdrawing, Revising or Supplementing Proposal

This section is replaced with:

Lummi Indian Business Council, Procurement Policy, III.A.3.v. Withdrawal or Correction to Bids.

### • 1-02.12 Public Opening of Proposals

This section is supplemented with the following:

After the Bid Opening, Bidders may obtain bid results from LNRD by calling (360) 584-4046 or emailing nathanr@lummi-nsn.gov.

### • 1-02.13 Irregular Proposals

1-02.13.1. j is added:

j. The solicitation includes alternate bid items and the proposal fails to include a unit price for every alternate bid item. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

### • 1-02.16 Additive or Deductive Bid Items (New)

This section is added:

The bidder agrees to hold all bid alternate prices.

The bid form has been broken out as follows:

Base Bid (Schedule A): All berm removal and construction work downstream of Mosquito Lake Road Bridge as shown on the project plans

Additive Bid (Schedule B): In-water construction streamflow isolation

### • 1-02.17 Bid Amounts (New)

This section is added:

The Bidder agrees to hold the base bid prices for forty-five (45) days from date of bid opening.

### 1-03 AWARD AND EXECUTION OF CONTRACT

### • 1-03.3 Execution of Contract

This section is replaced with:

The bidder will return to LNRD a signed contract, insurance certificate(s), bonds and other paperwork as required by LNRD within ten (10) days after receipt of contract. If the apparent successful bidder fails to sign all contractual documents or provide the bond and insurance as required or return the documents within ten (10) days after receipt of the contract, the Owner may terminate the award of the contract.

#### • 1-03.4 Contract Bond

First paragraph, subparagraphs numbers 1 and 4 are replaced with:

- 1. Be on a standard surety provided form;
  - 4. Be conditioned upon payment of all applicable taxes, increases and penalties incurred on the project.

This section is further supplemented with the following:

In addition to a contract bond, the successful bidder shall provide an executed payment bond. All requirements listed regarding the contract bond shall also apply to the payment bond.

#### 1-03.7 Judicial Review

This section is replaced with:

Any decision made by the Contracting Agency regarding the award and execution of the Contract or Bid rejection shall be conclusive and subject to the Lummi Indian Business Council, Procurement Policy, VI.G Protest Procedures.

#### 1-04 SCOPE OF WORK

### • 1-04.4 Changes

This section is supplemented with the following:

If Contracting Agency desires to order a change in the Work, it may request a written Change Order proposal from Contractor.

- 1. Due to the short and critical duration of these types of projects, Contractor shall submit a Change Order proposal within 48 hours of the request from Owner, or within such other period as mutually agreed.
- 2. Contractor's Change Order proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in Work.
- 3. Upon receipt of the Change Order proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with the Contractor.
- 4. Pending agreement on the terms of the Change Order, Owner may direct Contractor to proceed immediately with the Change Order Work. Contractor shall not proceed with any change in the Work until it has obtained Owner's written approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- 5. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- 6. A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to LNRD within 48 hours of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If the Contractor believes it is entitled to an adjustment in the Contract Sum, Contractor shall immediately notify LNRD and begin to keep and maintain complete, accurate and specific daily records. Contractor shall give LNRD access to any such records and, if requested, shall promptly furnish copies of such records to Owner.

- 7. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than 48 hours before Contractor's written notice to LNRD. The written notice shall set forth, at a minimum, a description of:
  - a. The event giving rise to the request for an equitable adjustment in the Contract Sum:
  - b. The nature of the impacts to Contractor and Subcontractors, if any; and,
  - c. To the extent possible, the amount of the adjustment in Contract Sum requested.
- 8. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.
- 9. When the request for compensation relates to a delay or other change in Contract Time, Contractor shall demonstrate the impact on the critical path of the schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event:
  - a. Had specific impact on the critical path and, except in case of concurrent delay, was the sole cause of such impact; and
  - b. Could not have been avoided by re-sequencing of the Work or other reasonable alternatives.

### 1-05 CONTROL OF WORK

### • 1-05.1 Authority of Engineer

Replace last sentence of first paragraph with:

Whenever it is so provided in this Contract, the decision of the Engineer shall be final.

### • 1-05.5 Plans and Working Drawings

This section is supplemented with the following:

The Contractor shall submit supplemental Working Drawings as required for the performance of the Work including but not limited to, Water Management Plan and TESC plans.

### • 1-05.9 **Equipment**

The following new paragraph is inserted before the first paragraph:

Prior to mobilizing equipment on site, the Contractor shall thoroughly remove all loose dirt and vegetative debris from drive mechanisms, wheels, tires, tracks, buckets and undercarriage. The Engineer will reject equipment from the site until it returns clean.

This section is supplemented with the following:

Upon completion of the Work, the Contractor shall completely remove all loose dirt and vegetative debris from equipment before removing it from the job site.

### 1-06 CONTROL OF MATERIAL

## • 1-06.1 Approval of Materials Prior to Use

Section 1-06 is supplemented with the following:

(August 6, 2012)

In accordance with Buy America requirements contained in 23 CFR 635.410, the major quantities of steel and iron construction material that is permanently incorporated into the project shall consist of American-made materials only. Buy America does not apply to temporary steel items, e.g., temporary sheet piling, temporary bridges, steel scaffolding and falsework.

Minor amounts of foreign steel and iron may be utilized in this project provided the cost of the foreign material used does not exceed one-tenth of one percent of the total contract cost or \$2,500.00, whichever is greater.

American-made material is defined as material having all manufacturing processes occurring domestically. To further define the coverage, a domestic product is a manufactured steel material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States.

If domestically produced steel billets or iron ingots are exported outside of the area of coverage, as defined above, for any manufacturing process then the resulting product does not conform to the Buy America requirements. Additionally, products manufactured domestically from foreign source steel billets or iron ingots do not conform to the Buy America requirements because the initial melting and mixing of alloys to create the material occurred in a foreign country.

Manufacturing begins with the initial melting and mixing, and continues through the coating stage. Any process which modifies the chemical content, the physical size or shape, or the final finish is considered a manufacturing process. The processes include rolling, extruding, machining, bending, grinding, drilling, welding, and coating. The action of applying a coating to steel or iron is deemed a manufacturing process. Coating includes epoxy coating, galvanizing, aluminizing, painting, and any other coating that protects or enhances the value of steel or iron. Any process from the original reduction from ore to the finished product constitutes a manufacturing process for iron.

Due to a nationwide waiver, Buy America does not apply to raw materials (iron ore and alloys), scrap (recycled steel or iron), and pig iron or processed, pelletized, and reduced iron ore.

The following are considered to be steel manufacturing processes:

- 1. Production of steel by any of the following processes:
  - a. Open hearth furnace.

- b. Basic oxygen.
- c. Electric furnace.
- d. Direct reduction.
- 2. Rolling, heat treating, and any other similar processing.
- 3. Fabrication of the products.
  - a. Spinning wire into cable or strand.
  - b. Corrugating and rolling into culverts.
  - c. Shop fabrication.

A certification of materials origin will be required for any items comprised of, or containing, steel or iron construction materials prior to such items being incorporated into the permanent work. The certification shall be on DOT Form 350-109EF provided by the Engineer, or such other form the Contractor chooses, provided it contains the same information as DOT Form 350-109EF.

### August 6, 2012)

The following items of work containing steel or iron construction materials are considered to be temporary and are excluded from the Buy America requirements contained in 23 CFR 635.410 as described in the above paragraphs:

Materials used in temporary shoring and dewatering.

### 1-07 LEGAL RELATIONS AND RESPONSIBILITIES TO THE PUBLIC

#### 1-07.1 Laws to Be Observed

Section 1-07.1 is supplemented with the following:

The Contractor shall indemnify and save harmless Lummi Natural Resources, the Lummi Indian Business Council (including Council members, employees, the Engineer and any agents) against any claim that may arise because the Contractor (or any employee of the Contractor or subcontractor or materialman) violated a legal requirement.

Except as provided in this section (1-07.1), all costs incurred as a result of compliance with Federal, Tribal, State and Local rules and regulations shall be paid by the Contractor and all such costs, including taxes, permit and other fees, shall be included in the respective bid amounts.

(October 1, 2005, APWA GSP)

### **Tribal Sovereignty**

No provision of this Agreement will be construed by any of the signatories as abridging or debilitating any sovereign powers of the Lummi Nation; affecting the trust-beneficiary relationship between the Secretary of the Interior, Tribe, and Indian landowner(s); or interfering with the government to government relationship between the United States and the Tribe.

#### • 1-07.2 State Taxes

Delete 1-07.2(1) and 1-07.2(2) and replaced with the following:

The total bid amounts shall include Washington State Sales Tax (WSST) as a line item. All other taxes imposed by law shall be included in the bid amount. LNRD will include WSST in progress payments according to the percent of completion. The Contractor shall pay the WSST to the Department of Revenue and shall furnish proof of payment to LNRD if requested.

### • 1-07.5 Environmental Regulations

### 1-07.5(1) General

The first sentence is deleted and replaced with the following:

No Work shall occur within areas under the jurisdiction of resource agencies unless authorized in the Contract.

The third paragraph is deleted.

### **1-07.5(1)** General

This section is supplemented with the following:

This specification describes requirements originating from the Washington Department of Fish and Wildlife (WDFW), U.S. Fish & Wildlife Service (USFWS) Washington Department of Ecology (DOE) and U.S. Army Corps of Engineers (ACOE) whose collective responsibility in this case is to make sure aquatic resources and fish communities are adequately protected during construction projects.

The contractor is advised that many of the requirements for protection of fish life, water quality, etc., are shown on drawings and/or described in Division 2. Some other agency requirements are reflected in specifications and/or drawings related to site clearing, excavation limits, re-vegetation, etc. It is the Contractor's responsibility to be in compliance with all federal, state, and local regulations and permit requirements. The Contractor shall be held responsible for all fines or other penalties levied against the Project as a result of failure to comply with these requirements.

### 1-07.5(2) State Department of Fish and Wildlife

This section is revised to read:

In doing the Work, the Contractor shall:

- 1. Not degrade water in a way that would harm fish, wildlife, or their habitat.
- 2. Not place materials below or remove them from the ordinary high water line except as may be specified in the Contract.
- 3. Not allow equipment to enter waters of the State except as specified in the Contract.
- 4. Revegetate in accordance with the Plans, unless the Special Provisions permit otherwise.
- 5. Prevent any fish-threatening silt buildup on the bed or bottom of any body of water.
- 6. Ensure continuous stream flow downstream of the Work area.
- 7. Dispose of any project debris by removal, burning, or placement above high-water flows.
- 8. Immediately notify the Engineer and stop all work causing impacts, if at any time, as a result of project activities, fish are observed in distress or a fish kill occurs.

If the Work in (1) through (3) above differs little from what the Contract requires, the Contracting Agency will measure and pay for it at unit Contract prices. But if Contract items do not cover those areas, the Contracting Agency will pay pursuant to Section 1-09.4. Work in (4) through (8) above shall be incidental to Contract pay items.

### 1-07.5(2) State Department of Fish and Wildlife

This section is supplemented with the following:

The Contractor shall coordinate seven (7) days prior to all stream diversions and stream dewatering work with LNRD to allow LNRD to net fish out of the de-watered stream sections and safely return these fish to adjacent stream habitat.

The Contractor shall prepare a Spill Prevention, Control and Countermeasures (SPCC) Plan as outlined in 1-07.15(1). Oil absorbent pads and personnel trained in spill prevention and control will be on site during all heavy equipment operations.

Inspect heavy equipment at least on a daily basis for any leaks of petroleum products. Repair as needed.

Heavy equipment need to be steam-cleaned before shipping to the project site if the equipment will be operated within the stream channel or come in contact with surface waters.

### 1-07.5(3) State Department of Ecology

This section is revised to read:

In doing the Work, the Contractor shall:

- 1. Comply with Washington State Water Quality Standards.
- 2. Perform Work in such a manner that all materials and substances not specifically identified in the Contract documents to be placed in the water do not enter waters of the State, including wetlands. These include, but are not limited to, petroleum products, hydraulic fluid, fresh concrete, concrete wastewater, process wastewater, slurry materials and waste from shaft drilling, sediments, sediment-laden water, chemicals, paint, solvents, or other toxic or deleterious materials.
- 3. Use equipment that is free of external petroleum-based products.
- 4. Remove accumulations of soil and debris from drive mechanisms (wheels, tracks, tires) and undercarriage of equipment prior to using equipment below the ordinary high water line.
- Clean loose dirt and debris from all materials placed below the ordinary high water line. No materials shall be placed below the ordinary high water line without the Engineer's concurrence.
- 6. When a violation of the Construction Stormwater General Permit (CSWGP) occurs, immediately notify the Engineer and fill out WSDOT Form 422-011, Contractor ECAP Report, and submit the form to the Engineer within 48 hours of the violation.
- 7. Once Physical Completion has been given, prepare a Notice of Termination (Ecology Form ECY 020-87) and submit the Notice of Termination electronically to the Engineer in a PDF format a minimum of 7 calendar days prior to submitting the Notice of Termination to Ecology.
- 8. Transfer the CSWGP coverage to the Contracting Agency when Physical Completion has been given and the Engineer has determined that the project site is not stabilized from erosion.
- 9. Submit copies of all correspondence with Ecology electronically to the Engineer in a PDF format within four calendar days.

## 1-07.5(4) Air Quality

This section is revised to read:

The Contractor shall comply with all regional clean air authority and/or State Department of Ecology rules and regulations.

The air quality permit process may include additional State Environment Policy Act (SEPA) requirements. Contractors shall contact the appropriate regional air pollution control authority well in advance of beginning Work.

When the Work includes demolition or renovation of any existing facility or structure that contains Asbestos Containing Material (ACM) and/or Presumed Asbestos-Containing Material (PACM), the Contractor shall comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP).

Any requirements included in Federal and State regulations regarding air quality that applies to the "owner or operator" shall be the responsibility of the Contractor.

### 1-07.5(5) U.S. Army Corps of Engineers

When temporary fills are permitted, the Contractor shall remove fills in their entirety and the affected areas returned to pre-construction elevations.

If a U.S. Army Corps of Engineers permit is noted in Section 1-07.6 of the Special Provisions, the Contractor shall retain a copy of the permit or the verification letter (in the case of a Nationwide Permit) on the worksite for the life of the Contract. The Contractor shall provide copies of the permit or verification letter to all subcontractors involved with the authorized work prior to their commencement of any work in waters of the U.S.

### 1-07.5(6) U.S. Fish/Wildlife Services and National Marine Fisheries Service

The Contracting Agency will provide fish exclusion and handling services if the Work dictates. However, if the Contractor discovers any fish stranded by the project and a Contracting Agency biologist is not available, they shall immediately release the fish into a flowing stream or open water.

#### • 1-07.6 Permits and Licenses

This section is supplemented with the following:

The Contracting Agency shall be responsible for obtaining all environmental permits required for construction (e.g. Hydraulic Project Approval from WDFW, Army Corps of Engineers permits), excluding business licenses and any other permits required for the Contractor's operation. The Contractor shall be given a copy of the HPA and Corps of Engineers permit. The Contractor shall comply with all permit requirements and keep a copy of the permits on site at all times.

### • 1-07.9 Wages

This section is supplemented with the following:

Federal Funds: This Contract is subject to the requirements of the Federal Davis-Bacon and Related Acts (DBRA) requires that each contract over \$2,000 to which the United States is a party for the construction, alteration, or repair of public buildings or public works, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. Wage and fringe benefit rates for Heavy and Highway Construction Projects for Whatcom County are included as an Attachment (Davis-Bacon Act Requirements) of this Contract.

### 1-07.11(1) General Application

This section is supplemented with the following:

Title VII of the 1964 Civil Rights Act prohibits preferential employment on the basis of race, color, sex, national origin and religion, but nothing contained in Title VII shall apply to any business or enterprise on or near and Indian Reservation with regard to any publicly announced employment practices of such business or enterprise under which preferential treatment is given to any individual because they are an Indian. 42 U.S.C. § 2000e-2(i).

## 1-07.11(2) Contractual Requirements

Paragraph number 1 is supplemented with the following:

Nothing in this section shall prohibit contractor from providing Indian preference consistent with 42 .U.S.C. § 2000e-2(i).

### 1-07.14 Responsibility for Damage

Replace section with the following:

The Contracting Agency and all officers and employees of the Contracting Agency, will not be responsible in any manner for any loss or damage that may happen to the Work or any part; for any loss of material or damage to any of the materials or other things used or employed in the performance of Work; for injury to or death of any persons, either workers or the public; or for damage to the public for any cause which might have been prevented by the Contractor, or the workers, or anyone employed by the Contractor.

The Contractor shall be responsible for any liability imposed by law for injuries to, or the death of, any person or damages to property resulting from any cause whatsoever during the performance of the Work, or before final acceptance.

Subject to the limitations in this Section, the Contractor shall indemnify, defend, and save harmless the Contracting Agency, and all officers and employees of the Contracting Agency from all claims, suits, or actions brought for injuries to, or death of, any persons or damages resulting from construction of the Work or in consequence of any negligence or breach of Contract regarding the Work, the use of any improper materials in the Work, caused in whole or in part by any act or omission by the Contractor or the agents or employees of the Contractor during performance or at any time before final acceptance. In addition to any remedy authorized by law, the Contracting agency may retain so much of the money due the Contractor as deemed necessary by the Engineer to ensure the defense and indemnification obligations of this Section until disposition has been made of such suits or claims.

The Contractor shall indemnify, defend, and save harmless the State, its officers and employees and any county, city, or region its officers, and employees connected with the Work, within the limits of which county, city, or region the Work is being performed, all in the same manner and to the same extent as provided above for the protection of the Contracting Agency.

If such claims, suits, or actions result from the concurrent negligence of (a) indemnitee or the indemnitee's agents or employees and (b) the Contractor or the Contractor's agent or employees, the indemnity provisions provided in the proceeding paragraphs of this Section shall be valid and enforceable only to the extent of the Contractor's negligence or the negligence of its agents and employees.

The Contractor shall bear sole responsibility for damage to completed portions of the project and to property located off the project caused by erosion, siltation, runoff, or other related items during the construction of the project. The Contractor shall also bear sole responsibility for any pollution of rivers, streams, ground water, or other waters that may occur as a result of construction operations.

The Contractor shall exercise all necessary precautions throughout the life of the Project to prevent pollution, erosion, siltation, and damage to property.

The Contracting Agency will forward to the Contractor all claims filed against the Contracting Agency and/or any claims filed against the State according to RCW 4.92.100, that are deemed to have arising in relation to the Contractor's Work or activities under this Contract, and, in the opinion of the Contracting Agency, are subject to the defense, indemnity, and insurance provisions of the Contract and these Standard Specifications. Claims will be deemed tendered to the Contractor and insurer, who has named the Contracting Agency as a named insured or additional insured under the Contract's insurance provisions, once the claim has been forwarded via certified mail to the Contractor. The Contractor shall be responsible to provide a copy of the claim to the Contractor's designated insurance agent who has obtained/met the Contract's insurance provision requirements.

Within sixty (60) calendar days following the date a claim is sent by the Contracting Agency to the Contractor, the Contractor shall notify the Claimant of the following:

- a. Whether the claim is allowed or is denied in whole or in part, and, if so, the specific reasons for the denial of the individual claim, and if not denied in full, when payment has been or will be made to the claimant(s) for the portion of the claim that is allowed, or
- b. If resolution negotiations are continuing. In this event, status updates will be reported no longer than every 60 calendar days until the claim is resolved or a lawsuit is filed.

If the Contractor fails to provide the above notification within sixty (60) calendar days, then the Contractor shall yield to the Contracting Agency sole and exclusive discretion to allow all or part of the claim on behalf of the Contractor, and the Contractor shall be deemed to have Waived any and all defenses, objections, or other avoidances to the Contracting Agency's allowance of the claim, or the amount allowed by the Contracting Agency, under common law, constitution, statute, or the Contract and these *Standard Specifications*. If all or part of a claim is allowed, the Contracting Agency will notify the Contractor via Certified Mail that is has allowed all or part of the claim and make appropriate payments to the claimant(s) with available funds for that purpose.

Payments of appropriate funds by the Contracting Agency to claimant(s) under this Section will be made on behalf of the Contractor and at the expense of the Contractor, and the Contractor shall be unconditionally obligated to reimburse the Contracting Agency for the "total reimbursement amount", which is the sum of the amount paid to the claimant(s), plus all costs incurred by the Contracting Agency in evaluating the circumstances surrounding the claim, the allowance of the claim,

the amount due to the claimant, and all other direct costs for the Contracting Agency's administration and payment of the claim on the Contractor's behalf. The Contracting Agency will be authorized to withhold the total reimbursement amount from amounts due the Contractor, or, if no further payments are to be made to the Contractor under the Contract, the Contractor shall directly reimburse the Contracting Agency for the amounts paid within thirty (30) calendar days of the date that the notice the claim was allowed was mailed to the Contractor. In the event reimbursement from the Contractor is not received by the Contracting Agency within thirty (30) calendar days, interest shall accrue on the total reimbursement amount owing at the rate of twelve (12) percent per annum calculated at a daily rate from the date the Contractor received notification the claim was allowed. The Contracting Agency's costs to enforce recovery of these amounts are additive to the amounts owing.

The Contractor specifically assumes all potential liability for actions brought by employees of the Contractor and, solely for the purpose of enforcing the defense and indemnification obligations set forth in this Section 1-07.14, the Contractor specifically waives any immunity granted under the State industrial insurance law, Title 51 RCW. This waiver has been mutually negotiated by the parties. The Contractor shall similarly require that each Subcontractor it retains in connection with the project comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all liability for actions brought by the employees of the Subcontractor.

### • 1-07.15 Temporary Water Pollution Prevention

The Implementation Requirement section has the following sections 12 and 13 added:

12. The Contractor shall prepare a Temporary Erosion and Sediment Control Plan (TESC) in accordance with all local, state, and federal regulations and permits. The TESC shall include, at minimum, a description of temporary and permanent best management practices (BMPs) required to meet all local, state, and federal requirements, a description of the Contractor's proposed methods for de-watering, diversion during the course of construction, methods to control airborne pollutants including dust, and a Spill Prevention, Control and Countermeasures Plan as outlined in Section 1-07.15(1). The Contractor shall submit a TESC Plan to the Engineer for approval at least 10-calendar days in advance of the time best management practices (BMPs) and other devices are scheduled to be installed and utilized. The Contractor shall be solely responsible for submitting any proposed TESC plan or modification, obtaining the Engineer's approval and providing copies of the approved TESC plans to all entities required by law or project permits.

13. Acceptance by the Engineer of the submitted TESC plans shall in no way relieve the Contractor of the responsibility for permit and regulatory requirements. Acceptance of the TESC plan by the Engineer indicates that the plans generally appear to conform to the contract requirements. Such acceptance shall in no way be construed as confirmation of the technical accuracy or adequacy of the contents of the plans and shall not relieve the Contractor of the obligation to institute TESC measures in full compliance with contract requirements, and which function safely and correctly, and are in conformance with applicable statutes, ordinances, regulations, and permits. All fines or other penalties levied against the Project due to failure to comply with all federal, state, and local regulations and permit requirements shall be the responsibility of the Contractor and no additional compensation shall be allowed therefore.

## • 1-07.16(4) and 1-07.16(4)A

Section 1-07.16(4) is deleted and replaced with the following:

## 1-07.16(4) Archeological, Cultural Resources and Human Remains

The Project requires compliance with Executive Order 05-05, or Section 106 of the National Historic Preservation Act, whichever is applicable to the project, and the Lummi Nation Code of Laws, Title 40, Cultural Resources Preservation Code.

In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the Engineer and Contracting Agency. If human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the Engineer and Contracting Agency.

If the Engineer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under the Contract, the Engineer will make an adjustment in payment or the time required for performance of the Work in accordance with Sections 1-04.4 and 1-08.8.

## • 1-07.18 Public Liability and Property Damage Insurance

Replace the following numbered subparagraphs:

- 4. The Contractor shall be Named Insured and the Contracting Agency, the State, the Governor, Whatcom County, Washington State Department of Fish and Wildlife, Washington Department of Natural Resources, all officers and employees of the State, and their respective members, directors, officers, employees, agents, and consultants, and Natural Systems Design, Inc. (collectively, the "Additional Insureds") shall be included as Additional Insureds for all policies and coverages specified in this Section, with the exception of the OCP policy. Said insurance coverage shall be primary and noncontributory insurance with respect to the insureds and Additional Insureds. Any insurance or self-insurance beyond that specified in this Contract that is maintained by any Additional Insured shall be in excess of such insurance and shall not contribute with it. All additional insurance coverage required by this Section shall be written and provide by "occurrence-based" policy forms rather than "claims made" forms.
- 10. With the exception of the Commercial Automobile liability coverage, no policies of insurance required under this Section shall contain an arbitration or alternative dispute resolution clause applicable to the insurer and its insureds. Any and all disputes concerning (i) terms and scope of insurance coverage afforded by the policy holders in connection with coverage disputes, shall be resolved in Washington Superior Court, applying Washington law. Nothing in this Section, the Contract or any insurance policy shall be deemed or implied to to have waived the sovereign immunity of the Contracting Agency consenting to the jurisdiction of any court.

Item 11 of this section is revised to read:

Prior to contract execution, the Contractor shall file with the Lummi Nation Natural Resources Department, 2665 Kwina Road, Bellingham, Washington 98226, ACORD Form Certificates of Insurance evidencing the minimum insurance coverage required under these specifications.

# • 1-07.26 Personal Liability of Public Officers

Replace this section with:

Neither the Lummi Nation, the Contracting Agency, the State, the Engineer, nor any of their officers, employees, agents or consultants shall be personally liable for any acts or failure to act in connection with the Contract, it being understood that in such matters they are acting solely as agents of the Lummi Nation and/or the State.

Add this section:

### 1-07.28 Sovereign Immunity

Nothing in the Contract or Standard Specifications shall be construed or implied as a waiver of the sovereign immunity of the Lummi Nation, the Lummi Indian Business Council, any subdivision, instrumentality, wholly owned entity, or affiliate of the Tribe or any of their respective officers, employees, or agents acting within the scope of their authority unless a waiver is explicitly stated and duly approved.

### 1-08 PROSECUTION AND PROGRESS

### • 1-08.3(2)D Weekly Look-Ahead Schedule

This Section is revised to read:

A weekly onsite meeting will be scheduled between the Owner, Contractor and Engineer. Each week that Work will be performed, the Contractor shall submit a Weekly Look-Ahead Schedule showing the Contractor's and all Subcontractors' anticipated Work activities for the next two weeks. The Weekly Look-Ahead Schedule shall include the description, duration and sequence of Work, along with the planned hours of Work. This schedule may be a network schedule, bar chart, or other standard schedule format. The Weekly Look-Ahead Schedule shall be submitted and presented to the Tribe on the morning of the first workday of each week during which Work occurs. Failure to provide an updated schedule on a weekly basis shall be grounds for assessing liquidated damages against the Contractor in accordance with Section 1-08.9.

### • 1-08.5 Times for Completion

This section is supplemented to read:

The Contractor shall accomplish all work related to Schedule A requiring in-stream construction between July 15, 2020 and September 30, 2020 or as per conditions in the permit. Site preparation and other preliminary work (not requiring entry into a stream) may be started upon reception of necessary permits. All work at the site shall be completed by the contractor on the physical completion date of September 30, 2020, unless notified by Owner.

### • 1-08.9 Liquidated Damages

This section is revised to read:

LNRD and the Contractor recognize that time is of the essence and that the project will incur additional costs if the Work is not completed within the time, plus any extensions thereof, allowed in accordance with the Contract. LNRD and the Contractor also recognize the inconvenience, expense, and difficulties involved in a legal proceeding to prove the additional project cost if the Work is not completed within the time allowed in the Contract and within the short window of time allowed for performance of time to complete the Work in accordance with Washington law. Further, LNRD and Contractor recognize that LNRD is providing resources in support of project construction (labor, materials, and equipment); these resources are limited and as such, must be managed according to a detailed schedule. Accordingly, LNRD and the Contractor agree that as liquidated damages for delay, and not as a penalty, the Contractor shall:

- 1. Pay LNRD \$1,000 for each day beyond the permitted substantial completion date (September 30, 2020) for in-water work that in-water work is performed as well as for each day beyond the Physical Completion Date September 30, 2020 that the Contractor (or another party) requires to achieve physical completion of the Work.
- 2. Pay LNRD \$250 for each day beyond the first workday of the week for which a Weekly Look-Ahead Schedule is not provided and discussed with LNRD, up to a maximum of \$1,500 per week. The count of days-late shall reset at the start of a new week.
- 3. To authorize LNRD to deduct these liquidated damages from any money or sums due or owing to the Contractor.

The Contractor further agrees that in the alternative, LNRD may seek actual damages for the Contractor's breach, which sum may be proved and fixed by the Tribal Court.

### **1-08.10(2)** Termination for Public Convenience

Replace subparagraph number 3 with the following:

3. Subject to the approval of the Contracting Agency, the Engineer determines that such termination is in the best interests of Contracting Agency.

### 1-09 MEASUREMENT AND PAYMENT

### • 1-09.7 Mobilization

Add the Following:

This item shall consist of mobilization of the Contractor's forces that shall include but not be limited to the purchase, rental, transportation, setup, storage and maintenance of equipment and materials, and establishing temporary utilities and temporary facilities at the project site.

Demobilization shall be considered part of Mobilization and shall consist of the removal of all materials, equipment, temporary pollution control materials, and other items imported with the project improvements, designated as temporary, or slated for removal from the site as a part of

the project contract. This includes the removal of logs and equipment from the floodplain if construction is needed beyond September 30, 2020. Furthermore, demobilization shall include the repair or replacement of all pavement or other facilities damaged by the Contractor under the normal execution of the work described in the Project Plans, the Standard Specifications, and these Special Provisions. Damaged facilities shall be restored to their pre-damaged condition. Work to perform these repairs shall conform to the requirements outlined by the facility Owner. Acceptance of the project improvements must be in the form of a written "Notice of Completion". The Contractor is directed to Section 1-05.11 "Final Inspection" of the Standard Specifications.

"Mobilization" shall be measured on a Lump sum basis.

The contract price paid for "Mobilization" shall include full compensation for mobilizing the Contractor's forces that shall include but not be limited to: purchasing, transportation equipment, set-up, work, maintenance, materials, temporary power source and installation, and sanitation facilities for the contract lump sum bid price. This also includes full compensation for operations required to demobilize the Contractor's forces which shall include but not be limited to: the removal of equipment, materials, transportation, sanitation facilities, temporary BMP's, high visibility (orange colored) fencing, and project clean-up and repair of pavement and other facilities damaged during the normal execution of the project work in accordance with these Special Provisions, the Standard Specifications, the Plans, and to the satisfaction of the Engineer. If the Contractor elects to demobilize and remobilize before completion of the Work, no additional payment will be made.

Partial payments for "Mobilization," shall be made as follows:

When 5% of the total original contract amount is earned from other bid items, 50% of the amount bid for mobilization, or 5% of the total contract amount, whichever is the least, will be paid.

When 10% of the total original contract amount is earned from other bid items, 100% of the amount bid for mobilization, or 10% of the total original contract amount, whichever is the least, will be paid.

Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10% of the total original contract amount will be paid.

### **1-09.9(1)** Retainage

Delete this section.

### 1-09.11(1) A Disputes Review Board Membership

Replace the first sentence of the third paragraph with the following:

The agreements with these two Board Members should, but are not required to, contain language substantially similar language imposing "Scope of Work" and "Suggested Administrative Procedures" for Disputes Review Boards available at <a href="https://www.wsdot.wa.gov/business/consulting/agreements/disputesreview">www.wsdot.wa.gov/business/consulting/agreements/disputesreview</a>.

## 1-09.11(1) B Disputes Review Board Procedures

Replace the fourth sentence, of subparagraph number 3 with the following:

Where applicable, the Contract shall be interpreted and construed in accordance, with the laws of the State of Washington and the laws of the Lummi Nation.

Replace the fifth paragraph with the following:

In the event the Board's recommendations do not lead to resolution of the dispute, all Board records and written recommendations, including any minority reports may be utilized by either party in any subsequent litigation. However, the use in any subsequent litigation shall be subject to all applicable rules regarding the admissibility of evidence and neither party will have waived any objections to any evidence previously reviewed by the Board because they have participated in the Dispute Review Board Procedures and did not object to the use of said evidence.

### 1-09.11(3) Time Limitation and Jurisdiction

Replace with the following:

For the convenience of the parties to the Contract it is mutually agreed by the parties that any claims or causes of action which the Contractor has against the Contracting Agency, arising from the Contract shall be brought within 180 calendar days from the date of final acceptance of the Contract by the Contracting Agency; and it is further agreed that any such claims or causes of action shall be brought only in the tribal court of the Lummi Nation, on the Lummi Reservation. The parties understand and agree that the Contractor's failure to bring suit within the time period provided, shall be a complete bar to any such claims or causes of action. It is further mutually agreed by the parties that when any claims or causes of action which the Contractor asserts against the Contracting Agency arising from the Contract are filed with the Contracting Agency or initiated in court, the Contractor shall permit the Contracting Agency to have timely access to any records deemed necessary by the Contracting Agency to assist in evaluating the claims or action. By identifying the venue for disputes the Contracting Agency does not waive its sovereign immunity.

### 1-09.13(2) Nonbinding Alternative Disputes Resolution (ADR)

Replace third paragraph with the following:

The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted in Whatcom County, within the State of Washington at a location mutually acceptable to the parties.

### 1-09.13(3) A Administration of Arbitration

Replace the section with the following:

Arbitration shall be as agreed by the parties or, if the parties cannot agree, arbitration shall be administered through the American Arbitration Association (AAA) using the following arbitration methods:

- 1. The current version of the Construction Industry Arbitration Rules and Mediation *Fast Track Procedures* (July 1, 2015 edition or later) excluding Rule 54(c), shall be used for claims with an amount less than \$75,000.
- 2. The current version of the Construction Industry Arbitration Rules and Mediation *Regular Track Procedures* (July 1, 2015 edition or later) excluding Rule 54(c), shall be used for claims with an amount equal to or greater than \$75,000 and less than \$250,000.

The Contracting Agency and the Contractor mutually agree the venue of any arbitration hearing shall be in Whatcom County, within the State of Washington and any such hearing shall be conducted in Whatcom County, within the State of Washington. The decision of the arbitrator and the specific basis for the decision shall be in writing. The arbitrator shall use the Contract as a basis for decisions.

### 1-09.13(4) Claims in Excess of \$250,000

Replace the section with the following:

The Contractor and the Contracting Agency mutually agree that those claims in excess of \$250,000, submitted in accordance with Section 1-09.11 and not resolved by nonbinding ADR processes, may be resolved through litigation unless the parties mutually agree to resolve the claim through binding arbitration.

### 1-11 SAFETY PRECAUTIONS (NEW)

This section is added:

- 1. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the work. This includes Covid-19 safety precautions and the wearing PPE at all times.
- 2. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of his employees performing the work and other persons who may be affected by the work; prevent damage to materials, supplies and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with chapter 296-800 WAC and all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the work may affect them.
- 3. Contractor shall maintain an accurate record of exposure data on all incidents relating to the work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies or equipment. Contractor shall immediately report any such incident

to LNRD and appropriate jurisdictions. LNRD shall, at all times, have a right of access to all records of exposure.

- 4. All work shall be performed with due regard for the safety of the public. Contractor shall perform the work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor or paid as described in section 1-10 of the Standard Specifications and these Special Provisions. A traffic control plan is required as per bid item 2.
- 5. In an emergency affecting the safety of life or the work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if authorized or instructed.

Nothing provided in this section shall be construed as imposing any duty upon LNRD or Natural Systems Design with regard to, or as constituting any express or implied assumption of control or responsibility over, project site safety, or over any other safety conditions relation to employees or agents of the Contractor or any of its Subcontractors, or the public.

### 1-12 TEMPORARY UTILITIES (NEW)

This section is added:

Contractor shall supply and maintain all necessary and temporary electrical services and required water as needed for construction of this project. Any water required on site will be hauled by the Contractor from a safe and legal source. No water, at any time, may be drawn from the site stream.

Payment for Temporary Utilities shall be considered incidental to the project and no additional compensation shall be allowed.

**End of Division** 

## DIVISION 2 EARTHWORK

### 2-01 Clearing, Grubbing, and Roadside Cleanup

### • 2-01.1 Description

*Section 2-01.1 is supplemented with the following:* 

"Temporary Construction Access and Staging" means identifying, creating, and maintaining temporary access roads and materials and equipment staging and storage areas and includes actions such as clearing, grubbing and roadside cleanup.

- 2-01.2 Disposal of Usable Materials and Debris
- 2-01.2(1) Disposal Method No. 1 Open Burning

Replace Section 2-01.2(1) with the following:

Open burning will not be used to dispose of the debris resulting from the clearing and grubbing.

## • 2-01.2(3) Disposal Method No. 3 – Chipping

*Replace Section 2-01.2(3) with the following:* 

No vegetation shall be chipped. All native vegetation shall be distributed around the site as directed by the Owner or the Engineer.

## • 2-01.3 Construction Requirements

Add the following new sections:

### • 2-01.3(5) Temporary Construction Access and Staging

Keep temporary road construction level to a minimum. Temporary roads will be reestablished at previous locations, unless a new location would cause less resource damage.

The Contractor shall:

- 1. Shall locate and identify any existing utilities and shall install protection methods to ensure the existing utilities are not damaged. Existing utilities, if any, may not be shown on Project Plans.
- 2. Install access and staging areas as specified in the Project Plans, or as otherwise proposed under a formal submittal to the Engineer.
- 3. Shall minimize disturbance to existing vegetation, soil, and drainage ways as feasible.
- 4. Limit clearing to the minimum needed to access and stage for construction activities.
- 5. Fall hazard trees, if any, which are marked by the Owner. Use controlled felling to ensure the direction of fall and prevent damage to property, structures, roadway, residual trees, and traffic.
- 6. Stake and flag all proposed areas of clearing within the construction limits, which shall be limited to the access routes and staging areas at least 3 business days prior to construction.
  - a. Contractor shall inform the Owner when the flagging is installed. The Owner will inspect and approve proposed clearing areas.

- b. Flagging shall be 12" strips of high-visibility orange survey tape tied on 3-foot length wood lathe stakes or existing vegetation at 50 foot maximum spacing.
- 7. Install Best Management Practices (BMPs) as necessary or as required by permit documents that include but are not limited to: stabilized construction entrances, equipment wash stations, culverts or drainage berms or channels, silt fence, hog fuel/wood chips, etc.
- 8. Maintain all BMPs, for the duration of Project, to the level of function that was originally approved by the Owner at the time of installation.
- 9. Use existing or previously commissioned roadways whenever possible.
- 10. Minimize the number of temporary access roads and travel paths to lessen soil disturbance and compaction and impacts to vegetation.
- 11. Not build temporary roads on slopes where grade, soil, or other features suggest a likelihood of excessive erosion or failure.
- 12. Flag limbs proposed for removal in order to establish and maintain access. Limbs shall be approved by Owner prior to removal.
- 13. Not disturb any ground or vegetation outside of the construction limits unless approved by the Owner.
- 14. Not clear vegetation greater than 12" in diameter without prior Owner approval. Cleared vegetation shall be incorporated into log structures or channel construction as directed by Owner or Engineer.
- 15. Be responsible for the protection and preservation of all existing native vegetation including trees, shrubs, and other objects outside of the limits of the staging areas and access paths.
- 16. Prevent equipment from passing within the dripline of protected trees unless specifically permitted and supervised by Engineer or Owner.
- 17. Shall replace any existing tree, shrub, and bush located outside of the staging areas and access paths and approved clearing limits that are damaged or destroyed during construction in like type and size at no cost to the Owner.
- 18. Stage, stockpile, and sort trees and vegetation that are cleared in order to be re-located to their final location within the project area as directed by the Owner or Engineer.
- 19. Restore temporary roads in wet or flooded areas by the end of the applicable in-water work period.
- 20. Not construct new permanent roads.
- 21. Shall keep the premises clean, free of excess soils, and other materials, including refuse and debris, resulting from work throughout the operation for all phases of construction, including planting.
- 22. Remove all invasive vegetation within the clearing limits and dispose of outside of the project site in accordance with all permit requirements and standard BMPs.
- 23. Not stockpile materials or equipment in any manner that may create hazards or obstacles to adjacent roadways.
- 24. Obliterate and restore temporary access roads.
  - a. All access route(s) into the site shall be restored as specified in these specifications and in the Project Plans. This work shall include excavation and removal of any materials used for the access road and access path(s), removing surplus soils, materials, flagging, stakes, geotextile, and debris from the construction site and leaving the project in a clean condition and soils fully stabilized using erosion control measures. Site restoration shall include the following elements:

- b. Remove any rock surfacing from temporarily created roads.
- c. Re-contour road segments treated within Riparian Areas to mimic natural floodplain contours and gradient to the greatest degree possible.
- d. Decompact to the entire depth of compaction, for an uneven, rough surface without furrows. Scarify the soil surface of roads and paths, stream crossings, staging, and stockpile areas so that seeds and plantings can root.
- e. Upon project completion, rehabilitate all disturbed areas in a manner that results in similar or better than pre-work conditions through removal of project related waste, spreading of stockpiled materials (soil, LW, trees, etc.) seeding, or planting with local native seed mixes or plants.
- f. Install short-term stabilization measures, which may include the use of native sterile seed mix (when native seeds are not available), weed-free certified straw, jute matting, and other similar techniques. Short-term stabilization measures will be maintained until permanent erosion control measures are effective. Stabilization measures will be instigated within three days of construction completion.
- 25. Seed the entire excavation limits and top dress with weed-free certified straw.
- 26. Restore and replant any areas and vegetation outside of the approved construction limits.
  - a. Vegetation shall be replaced in-kind at the Contractor's sole expense.
- 27. Place an earthen barricade at the junction with the existing road system adequate to prevent motorized access. Temporary access roads shall be closed to motorized travel as soon as possible and no later than the time when equipment is demobilizing from the site.

#### **Noxious Weed Control**

Contractor shall thoroughly pressure wash all equipment prior to entry onto project site, or before moving equipment between infested sites, to remove all contaminated soils, plant parts, seeds, vegetative matter, or other debris that could contain or hold seeds. Equipment shall be considered free of soil seed, and other such debris when a visual inspection does not disclose such material. The Owner reserves the right to also require the cleaning of equipment as required by this clause in cases where equipment is being moved onto nonfederal lands. All subsequent move-ins of equipment to the sale area shall be treated in the same manner as the initial move in.

#### • 2-01.4 Measurement

*Section 2-01.4 is supplemented with the following:* 

No unit of measurement shall apply to the lump sum unit Contract price for "Temporary Construction

Access and Staging".

### • 2-01.5 Payment

Replace paragraphs 1, 2, and 3 of Section 2-01.5 with the following:

Payment will be made for the following Bid items when they are included in the Proposal:

"Temporary Construction Access and Staging", per lump sum. The per lump sum unit Contract price for "Temporary Construction Access and Staging", shall constitute full payment for all materials, labor, and equipment necessary to perform clearing and to construct, maintain and decommission temporary access roads.

Installation, maintenance, and materials procurement for BMPs to control erosion and water quality

such as temporary construction entrance, temporary stream crossing, silt fence, hog fuel/wood chips, construction of water bars, etc., if needed, shall be paid for under separate bid items. Seeding and mulching shall be paid for under separate Bid items.

### 2-02 Removal of Structures and Obstructions

### • 2-02.3 Construction Requirements

*Section 2-02.3 is supplemented with the following:* 

Miscellaneous existing man-made debris within the construction, access, and staging areas shall be removed and disposed of at a permitted disposal site. Materials to be removed include, but are not limited to, fencing, trash, and household debris. Disposal of man-made debris, recyclables, or hazardous materials shall be in accordance with current law.

## • 2-02.5 Payment

*Replace Section 2-02.5 with the following:* 

All work specified in this section will be incidental to the Bid items included in the Proposal and no separate measurement or payment will be made.

### 2-03 Roadway Excavation and Embankment

- 2-03.3 Construction Requirements
- 2-03.3 (7) Disposal of Surplus Material
- 2-03.3(7) A General

*Supplement Section 2-03.3(7) with the following:* 

#### The Contractor shall:

1. Be solely responsible for loading, hauling and the disposing of all surplus material and construction debris in a manner complying with all local, state and federal statutes and regulations.

### • 2-03.5 Payment

*Replace Section 2-03.5 with the following:* 

All costs involved in the loading, hauling and the disposal of all surplus material and construction debris shall be included in the unit Contract price shown on the proposal for "Temporary Construction Access and Staging" and no further payment will be made.

# DIVISION 8 MISCELLANEOUS CONSTRUCTION

#### 8-01 Erosion Control and Water Pollution Control

### • 8-01.1 Description

Section 8-01.1 is supplemented with the following:

This work shall consist of installing Temporary Erosion and Sediment Control (TESC) Measures that include Best Management Practices (BMPs) as shown on the plans in accordance with these Special Provisions, and all federal, state, and local regulations and permit requirements and as recommended by the Project Engineer. The Contractor shall be responsible for all temporary erosion control measures during construction and until the Notice of Termination is issued to meet all federal, state, local and permit requirements. Furthermore, the Contractor shall utilize best management practices to prevent invasive species transport to and from the project site as specified on the drawings. The Contractor shall submit a detailed safety plan to the Contracting Officer, including a Covid-19 prevention plan, in accordance with those developed by the American General Contractors (AGC).

### • 8-01.2 Materials

Substitute the Following:

Materials shall meet the requirements of this section and the following sections:

Sections 1-07

- 8-01.3 Construction Requirements
- 8-01.3(1) General

*Section 8-01.3(1) is supplemented with the following:* 

This work shall consist of temporary pollution control and erosion control measures that may be shown on the Plans, specified in this Special Technical Specification listed in the HPA or NWP 27, as directed by the Contracting Officer, or Project Engineer during the life of the contract. All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact, flowing water, and wind. Full stabilization means all soil disturbing activities at the site have been completed and areas where the soil or natural vegetative cover has been disturbed have been properly covered and accepted to meet permanent erosion control requirements. Temporary erosion control measures will also be required at staging areas utilized during project construction and on all disturbed soils prior to establishment of permanent erosion control measures. Water shall also be applied to all exposed soils and erodible materials to prevent blowing by wind. Said

work is intended to provide prevention, control, and abatement of water and air pollution within the limits of the project and to minimize damage to the work, adjacent properties, streams or other bodies of water. From October 1 through April 30, no soils shall remain exposed and unworked for more than 2 days. From May 1 to September 30, no soils shall remain exposed and unworked for more than 7 days. This condition applies to all soils on site, whether at final grade or not. Soils shall be stabilized at the end of the shift before a holiday or weekend if rain is forecast. Temporary erosion control measures shall remain in place until permanent measures are established either under this Contract. The TESC Plan will be submitted to the Contracting Officer five (5) days prior to beginning clearing. All equipment used for in-water work within the existing ordinary high water (OHW) of the South Fork Nooksack River shall use only biodegradable vegetable-based hydraulic fluids. Equipment outside of the existing OHW is not required to use biodegradable vegetable-based hydraulic fluids.

Equipment used for this project shall be free of external petroleum-based products while working near any surface water or wetland. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tracks, tires, etc.) and undercarriage of equipment prior to working below the OHW. Equipment shall be checked at the beginning of each work shift for leaks, and any repairs shall be completed prior to commencing work activities. No equipment shall be stored overnight within 100 ft. of any wetted channel.

## **Permit Compliance**

The Contractor shall perform all work in compliance with all permits. The Contracting Agency will provide a copy of the finalized permits to the Contractor upon award of the Contract.

Turbidity shall be monitored by Lummi Natural Resources. Turbidity requirements are set forth in permit documents. Efforts to minimize turbidity and mitigate for turbidity in excess of permit and permit requirements is the responsibility of the Contractor.

#### **Fish Protection**

Prior to any dewatering, or stream diversion, fish must be captured, relocated and isolated from work areas. Fish removal is to be performed by the Owner. The Contractor shall monitor the work area during construction and if a connection to the flowing water occurs such that fish can enter the work area; the Contractor shall correct the site isolation system and fish shall be removed by the Owner prior to commencement of work at the cost of the Contractor. Contractor shall coordinate construction activities with fish removal activities and provide a minimum of 5 business days' notice to the Owner and Engineer prior to need for fish removal activities.

### **Temporary Erosion and Sediment Control**

The Contractor is responsible for protecting water quality and minimizing disturbance to site soils and vegetation. The Contractor shall stabilize disturbed areas and temporary access roads with seeding and mulching per WSDOT specifications. The Contractor shall have the materials on hand to install and maintain BMPs to protect water quality in the event of erosion. BMP's that may be needed include stabilized construction entrance, silt fence, or equipment wash stations.

#### **Streamflow Isolation**

It is likely that streamflow will not be encountered because the site historically dewaters at the time of year during construction. However, if the stream channel conveys streamflow at depths equal to or greater than 4" (as measured by the Owner or Engineer at locations spanning the entire length of work area), it is the responsibility of the Contractor to ensure that the work will not adversely affect water quality or aquatic species. This work may involve temporary stream crossing(s) and temporary stream diversion or cofferdams to isolate work areas. This work will also ensure that fish within the site are isolated from the work area per guidelines above.

### • 8-01.3(1)A Submittals

*Section 8-01.3(1)A is supplemented with the following:* 

The following submittals must be provided at the time of response to the request for proposals as outlined in Section 1-02.

### 8-01.3(1)A1 Temporary Erosion and Sediment Control Plan

Section 8-01.3(1)A1 is supplemented with the following:

The TESC plan shall document the Contractor's application of BMP's to manage erosion of exposed soils anywhere within the project limits during the course of construction. The TESC plan shall be submitted to the Engineer for review and approval. No materials shall be brought into the staging area(s) or construction area until the TESC plan has been approved.

This project is scheduled to occur during the "dry season" of May 1 to September 30. The contractor is required to submit a TESC plan for the "dry season." However, the Contractor shall also include action plans in the event of rainstorm to prevent excessive erosion from rainfall and plans to respond to increased flows within the creek.

Additionally, if construction extends beyond September 30, the Contractor shall provide a sediment control plan to meet local, state, and federal requirements for construction in the "wet season". The wet season erosion and sediment control plan shall be submitted to the Engineer for review and approval prior to September 15. The wet season erosion and sediment control plan shall be prepared at the Contractor's sole expense.

It is anticipated that the main stream channel will be dry during construction, based on seasonal trends of natural dewatering. However, if waterbodies are actively flowing during construction, it is the responsibility of the Contractor to ensure that the project work can be completed while protecting water quality. This includes, but is not limited to, managing turbidity, isolating machine work areas from flowing water, and protecting aquatic species present in the work areas.

The TESC Plan shall, at a minimum, include narrative and marked up drawings that:

- 1. Uphold Washington Department of Ecology water quality standards and Washington Department of Fish and Wildlife Hydraulic Project Approval (HPA) requirements as appropriate.
- 2. Indicate the proposed access route(s) if they differ from those shown in the Plans, and shall show where BMPs will be installed and maintained during the duration of the project. This

includes showing where "Temporary Construction Entrances" may be installed if erosion is expected at the construction site access point.

- 3. Indicate the proposed staging areas which describe the equipment and construction materials, spoils, debris, etc. that will be staged in these areas during the project.
- 4. Indicate the proposed seed mix and application methods, including mulching materials and methods to be installed across disturbed areas.
- 5. Describe construction sequencing and BMP's proposed to protect water quality in the event that construction interacts with flowing water.
- 6. Indicate discharge locations of any stream bypass, diversion and groundwater management/pumping stations, as well as the methods and BMP's that will be installed to manage erosion/scour and turbidity at discharge locations.
- Describe how discharge locations will be monitored for turbidity as well as the materials held on-site and the actions that will be employed and maintained on site to control turbidity.
- 8. Describe how equipment will cross the wetted stream channel and how work will be isolated from flowing water, as well as how streamflow will be reintroduced to temporarily dewatered or isolated areas following construction.

## • 8-01.3(1)C7 Turbidity Curtain

Section 8-01.3(1)C7 is supplemented with the following:

The TESC plan shall contain manufacturer cut sheets on the TESC elements proposed to be used in the project, such as turbidity curtain. The turbidity curtain, if used, shall be suitable for withstanding the flow velocities present at time of construction and sufficiently sized to fully reach a weighted curtain bottom to the bottom of the existing channel along the alignment shown given water elevations at time of construction. The Contractor is responsible for determining actual velocities and selecting a suitable product and installation details to ensure stability for conditions present at time of construction, including all anchors to secure the silt boom at the shore and along the alignment shown on the Plans.

### • 8-01.3(1)C8 Temporary Stream Crossing

The Contractor shall:

- 1. Install temporary bridge crossings where flowing surface water is encountered.
- 2. Receive approval from the Owner Engineer for location, span, type and duration of stream crossings before installation.
- 3. Not alter the capacity of the flowing water channel such that a raise in water surface or increase in velocity causes excess inundation or velocities capable of eroding and scouring of streambed or bank material.
- 4. Construct the bridge crossing to support the greatest vehicle loads anticipated to cross the structure such that risk of failure and subsequent contamination of surface water and groundwater is eliminated.

## • 8-01.3(1)C9 Temporary Stream Diversion and Work Area Isolation

This work shall include costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality during the scenario that the stream channel is conveying streamflow. This work includes the additive items of "Temporary Stream Crossing", "Turbidity Curtain", and "Cofferdam and Partial Diversion". The Contractor shall:

- 1. Isolate flowing water from the work area and ensure turbidity does not exceed requirements set forth in applicable permits and local, state, and federal requirements.
- 2. Ensure fish protection BMP's are employed and maintained. BMP's may include bulk bag cofferdam, turbidity curtain, and/or pumping systems.
- 3. Minimize the duration of any partial diversion of streamflow or isolation of work areas from flowing water.
- 4. Gradually reintroduce streamflow to isolated areas and prevent "pulses" of streamflow from entering previously isolated areas and causing erosion.
- 5. Specify the means, methods, materials, timeline and sequencing for any stream diversion or isolation by providing narrative, technical specifications and typical details within the TESC Plan submittal as outlined in section 8-01.3(1)A1.

#### • 8-01.4 Measurement

Section 8-01.4 is supplemented with the following:

No unit of measurement shall apply to the lump sum unit Contract price for "Temporary Erosion and Sediment Control".

"Stabilized Construction Entrance" shall be measured per square yard installed and maintained per WSDOT specifications.

"Seeding and Mulching" shall be measured per acre of seed and mulch installed per WSDOT specifications.

No unit of measurement shall apply to the lump sum unit Contract price for "Temporary Stream Crossing – Additive Item".

"Turbidity Curtain – Additive Item" shall be measured per linear foot installed.

"Cofferdam and Partial Diversion – Additive Item" shall be measured per linear foot installed.

No unit of measurement shall apply to "Permit Compliance", "Fish Protection", "Turbidity Curtain", or "Temporary Stream Diversion and Work Area Isolation" as these items are considered incidental to the Bid items listed in the Proposal.

### • 8-01.5 Payment

*Section 8-01.5 is supplemented with the following:* 

Payment will be made for the following Bid items when they are included in the Proposal:

"Temporary Erosion and Sediment Control", per lump sum. The unit Contract price per lump sum for "Temporary Erosion and Sediment Control", shall include costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality. Development of the TESC Plan submittal shall be incidental to the Bid item. This Bid item is for base TESC items and does not include those BMPs associated with working in flowing water. Those items are considered additive items and are associated with separate Bid items. The inclusion of BMP's and construction methods associated with working within flowing water in the development of the TESC Plan submittal shall be incidental to the Bid item.

"Stabilized Construction Entrance", per square yard. The unit Contract price per square yard shall include costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality.

"Seeding and Mulching", per acre. The unit Contract price per acre shall include costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality.

"Temporary Stream Crossing – Additive Item", per lump sum. The unit Contract price per lump sum shall include costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality.

"Turbidity Curtain – Additive Item", per linear foot. The unit Contract price per linear foot shall costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality.

"Cofferdam and Partial Diversion – Additive Item", per linear foot. The unit Contract price per linear foot shall costs for all labor, materials, tools, equipment, and incidentals required to furnish, install, maintain, and remove BMPs to control erosion and water quality.

#### 8-30 Near and Instream Construction

New Section

## • 8-30.1 Description

This work consists of removal of the existing berm via excavation, hauling excavated materials off site, as well as tipping/felling of large trees within the work limits and relocating and installation of tipped/felled trees to areas within the existing stream channel and throughout the grading area as directed by the Owner and/or Engineer in order to provide instream hydraulic function.

### **Subsurface Information**

No geotechnical investigation has been performed for this site.

#### • 8-30.2 Materials

No imported materials are anticipated for this work. Timber materials used for instream habitat structures are to be generated on-site.

## • 8-30.3 Construction Requirements

Contractor shall construct all structures to the quantities and/or in the dimensions as shown on the plans and/or as directed by the Engineer in the field. The location of logs, log structures, streambed sediment, streambed cobble and streambed boulders are shown on the Project Plans. Their final locations, orientation, and/or degree of burial will be adjusted by the Engineer at the time of construction to suit field conditions at time of construction

### • 8-30.3(1) Berm Excavation (and Off-site Hauling or On-site Disposal)

There are approximately +/- 3,900 bank cubic yards of material associated with excavation of the existing berm. The volume estimated is approximate and was not professionally surveyed. It is the responsibility of the Contractor to confirm the actual volume to be excavated and hauled. All excavated materials are to be hauled off-site and disposed of at an Owner-approved location, except for a small volume of material which shall be locally stockpiled within the work area and redistributed around habitat tree features as directed by the Owner or Engineer. It is anticipated that approximately 500 bank cubic yards are to be distributed between habitat tree features and other grading areas as directed by the Owner or Engineer and as shown in the Plans. The volume of material distributed on site will vary depending on the topography actually encountered and where habitat trees are specified to be installed. The actual volume that will be placed on site may vary by +/- 250 cubic yards and the material not used on site shall be hauled and disposed of off site.

The excavated material to be redistributed within the habitat trees and other areas on site shall be sorted by approximate size classes. The Owner or Engineer will specify the locations for the approximate various size classes. A general description of classes the Contractor shall separate excavated material (separated via visual separation into various stockpiles) by includes:

- 1. Fines and topsoil (less than 2" diameter) used in to top-dress areas to be planted
- 2. Gravel (less than 6" dimeter) preferably used around habitat trees in the active channel
- 3. Cobble (less than 12" diameter) preferably used around habitat trees in the active channel, and also in any floodplain grading areas
- 4. Boulders (greater than 12" diameter) preferable used in floodplain grading areas

This work does not include the use of processing equipment such as screens, conveyors, nor other mining or processing equipment.

Prior to beginning any earthwork, the Contractor shall:

- 1. Review the marked excavation limits and grade marks with the Owner or Engineer. The Owner or Engineer will survey and stake the excavation limits and finished grade.
- 2. Protect stakes and elevation markers placed by the Engineer.

3. Clear and grub in accordance with Section 2-01.3. Remove vegetation, stumps, downed logs, and debris within the grading limits. Stockpile all trees removed from within the grading limits.

### • 8-30.3(4) Habitat Tree Placement

The Contractor shall fell large trees within the work area that are marked by the Owner. These trees shall be temporarily stockpiled while berm excavation activities are underway, and shall be relocated to their final locations and installed as habitat trees per the provided details and as directed by the Owner or Engineer in the field. The trees shall be felled with rootwads in-tact as feasible. The Contractor shall excavate around the base of the tree such that a 5-ft minimum rootwad remains in-tact and attached to the tree after the tree is felled (or tipped). Felled trees will be cut to lengths as marked and directed by the Owner or Engineer. Limbs and branches are preferred to be left intact to provide additional habitat complexity and hydraulic roughness.

- 8-30.3(7) Submittals
- 8-30.3(7)A Instream Construction Plan

The Contractor shall submit an Instream Construction Plan to the Engineer for review. No work shall begin before the Engineer has approved the submittals.

Instream Construction Plan shall consist of the following individually approved elements:

- 1. Project Schedule
- 2. Equipment List
- 3. Construction Sequencing Plan

### • 8-30.3(7)A.1 Project Schedule

All activities listed below in the Construction Plan to ensure all work is completed within the inwater work window. Critical milestones that shall be included in the schedule of work shall be:

Notice to Proceed (NTP) (Estimated date): 8/1/2020

Availability of site for access route preparation: 8/1/2020

Start of in-water work window: 8/1/2020 End of in-water work window: 9/30/2020

Site closure: 9/30/2020

The Project Schedule submittal shall specify the schedule of construction activities that includes temporary access road and staging area construction, clearing and grubbing, excavation and hauling activities, habitat tree installation, site closure and other activities.

### • 8-30.3(7)A.2 Equipment List

The Contractor shall submit as part of the Instream Construction Plan, the list of equipment that includes make and model, working capacities, and anticipated hours of use or the primary activities that said equipment will be performing.

### • 8-30.3(7)A.4 Construction Sequencing Plan

The Contractor shall submit a Construction Sequencing Plan that describes the proposed sequence of work activities to complete the Project. The Project Plans provide a general construction

sequence. The Stream Construction Plan shall include, at a minimum, the elements described in an example Construction Sequencing Plan below. The Construction Sequencing Plan shall reference the TESC Plan where applicable.

The Contractor must develop the proposed Construction Sequencing. The following presents an example general construction sequence.

- 1. Receive approval of the TESC Plan, and Construction Sequencing by the Owner.
- 2. Survey and stake access road and staging area limits and review with the Owner. Stakes/flagging will be adjusted per Engineer and Owner feedback and will be maintained during the duration of the project.
- 3. Install erosion control measures.
- 4. Install temporary access routes within the project area.
- 5. Remove vegetation within the grading limits. Trees for habitat trees are to be tipped or felled with rootwads intact as feasible. Stockpile trees and vegetation for use within the project elements such as instream habitat trees
- 6. The Engineer or Owner will stake grading extents. Stakes and elevation markers (hubs) or similar shall be protected by the Contractor for the duration of the project.
- 7. Contractor shall stake/flag the locations, dimensions and extents of the temporary stream bypass elements, if necessary and review with the Owner and Engineer.
- 8. Install any stream bypass or isolation necessary to perform excavation without impacting water quality.
- 9. Notify the Owner to perform fish exclusion within isolated work areas and assist as needed with removing fish from the isolated work area.
- 10. Commence excavation for berm removal.
- 11. Once grade is achieved, the Owner or Engineer will stake locations for habitat trees.
- 12. Construct stream crossing and site isolation, as necessary depending on flow conditions, to protect water quality during installation of habitat trees.
- 13. Install instream habitat tress as directed by the Owner or Engineer.
- 14. After completion, remove all temporary stream crossings and water isolation features.
- 15. Remove access paths, restore access route and staging areas per guidelines in Section 2-01.3.
- 16. Remove erosion control measures.
- 17. Stabilize all disturbed areas.
- 18. Repair any damage to roadway surfaces caused by construction activities.

#### • 8-30.4 Measurement

"Berm Excavation and Off-site Hauling" will be measured per cubic yard excavated and hauled off-site.

"Berm Excavation and on-site Disposal" will be measured per cubic yard excavated and placed in final location to final grade on-site.

No unit of measurement shall apply to the lump sum unit Contract price for "Habitat Tree Placement".

## • 8-30.5 Payment

Payment will be made for the following Bid items when they are included in the Proposal:

"Berm Excavation and Off-site Hauling", per cubic yard excavated and hauled off-site.

The per cubic yard unit Contract price for "Berm Excavation and Hauling" shall include all costs incurred for excavating, temporary stockpiling, grading, loading, hauling, and disposing of the material at an off-site location in accordance with all local, state and federal laws.

"Berm Excavation and On-site Disposal", per cubic yard excavated and redistributed on-site to final location and grade as approved by the Owner or Engineer.

The per cubic yard unit Contract price for "Berm Excavation and On-site Disposal" shall include all costs incurred for excavating, temporary stockpiling, grading, loading, hauling, and locally disposing of the material within the Project Site, including compaction, delivering boulders, cobble/gravel and/or fines in the required sequence, and integrating slash within the top fill layer. This includes the work of placing gravel material around and within habitat trees or as otherwise directed by the Owner or Engineer.

"Habitat Tree Placement" per lump sum. The unit Contract price per lump sum for "Habitat Tree Placement" shall include costs for all labor, materials, tools, and equipment to fell/tip on-site trees, temporarily stage and stockpile, and move to their final location as directed by the Owner or Engineer. This work includes minor excavation to embed or bury portions of the trees into the stream channel or floodplain as directed by the Owner or Engineer. This work includes cutting trees to specified lengths as directed by the Owner or Engineer. The placement of gravel excavated during berm removal activities is associated with this work, but paid under separate Bid item. Placement of native alluvium material generated from the location of the tree placement as a result of minor excavation is considered incidental to this bid item. If excess trees and woody material are generated on site, this work item shall also include moving of any felled or tipped trees to a temporary staging area for use at a later date by the Owner, which will not include any hauling, but relocation and decking of trees within the construction limits.