Request for Quotations

2021 Log Contract

Including the Supply and Delivery of Wood material and the Loading & Hauling of Donated Wood material

North Fork Nooksack Maple Creek Phase 1 and 2 Restoration Project

Nooksack Indian Tribe

Natural & Cultural Resources Department

February 26, 2021
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1.0 Request for Quotations

The Nooksack Indian Tribe (Tribe) is advertising this Request for Quotations (RFQ) for a Contract that will include the supply and delivery of wood material for our North Fork Nooksack River Maple Creek Reach Phase 1 and 2 Restoration Project (Maple Creek Reach Project), an engineered log jam (ELJ) construction project located near Maple Falls, WA. Supply and delivery will take place over the course of two years (Phase 1 logs 2021 and phase 2 logs 2022). Tasks 1, 2, 3, and 4 will occur in spring and summer 2021 while Tasks 5, 6, 7, and 8 will occur in spring and summer 2022. There are also 5 additive bid items, Tasks 3, 4, 7, 8, and 9. The Tribe will select two of the four options depending on the outcome of a pending agreement with Burlington Northern Santa Fe Railroad (BNSF) for a donation of racking logs. The Tribe reserves the right to select portions of additive bid items from tasks 3, 4, 7, and 8 at its sole discretion. Wood material to be supplied by the Contractor consists of logs without attached rootwads, logs with attached rootwads, racking logs (with and without attached rootwads), slash material, and hog fuel as specified in the Log Schedule and the specifications listed herein. Further, the Contract will consist of delivery and installation of 1,250 CY of hog fuel along the access trail and in the footprint of the staging areas and removal and staging of up to 10 conifer and hardwood trees at the site access location. The RFQ section of this document specifies the bid requirements and award process while the Scope of Work section describes the work and material specifications in detail.

Notice is hereby given that quotations for the supply and delivery of wood material and the work described in the Scope of Work below will be received at the offices of the Nooksack Tribe Natural & Cultural Resource Department until 4pm on March 12th, 2021. Electronic copies of quotations will also be accepted in the form of a PDF file(s) including scanned copies of the required Contractor Response (Quote) Forms. Original signed copies of the Response Forms must be produced before award of Contract. Contractors will be notified of the selected quote within 7 working days or sooner. Quotes received after the submittal deadline will not be considered.

All requests for clarification or additional information regarding this RFQ must be submitted to the Project Manager by 10am, on March 10th, 2021. No questions related to this RFQ will be considered after this deadline.

Project Manager:
Eric Stover
(360) 592-5140 ext. 3141
estover@nooksack-nsn.gov

1.1 Mandatory Pre-Quote Site Visit

Bidders or representatives of potential bidders shall attend a mandatory pre-bid site visit to determine all requirements and conditions that will affect the work before the quote deadline. The site visit will give bidders the opportunity to assess the project access road, proposed log staging area(s) and the site(s) in Deming where wood material donated by BNSF will be located. The mandatory site visit will take place the week of March 8th, 2021, the day and time will be determined based on Tribe staff and interested contractor(s) availability. Prospective bidders shall contact the Tribe’s Project Manager by March 5th at 12:00pm to express interest in submitting a quotation, and therefore attending the site visit. All participants will be required to wear face masks and practice social distancing of 6’ at all times during the site visit. The Tribe’s Project Manager will coordinate with the bidders who have expressed interest to
schedule the day and time of the site visit. To be considered a responsive bidder all potential bidders and representatives of potential bidders must attend the entire mandatory pre-bid site visit. Roll-call will be taken at the beginning and end of the mandatory pre-bid site visit to verify full attendance. Bidders and representatives of potential bidders whom do not attend the entire mandatory pre-bid site visit may be considered by the Tribe at their own discretion as unresponsive.

1.2 Contractor Licenses and Permits
The Contractor shall comply with all environmental regulations per the Washington Department of Transportation 2021 Standard Specifications for Road, Bridge, and Municipal Construction Section 1-07.5. The Tribe will obtain all necessary permits and permissions necessary for the Contractor to haul on the access roads and deliver wood material to the Project Staging Areas. All costs incurred by the Contractor to comply with any permit requirements including, but not limited to, those described in the sections below shall be included in the unit bid prices. Examples of permit requirements for past North Fork project phases can be provided by the Tribe at the Contractor’s request.

The Tribe may request the Contractor and all Subcontractors provide copies of all applicable permits and licenses required for the harvest and transport of the wood material before said materials are accepted by the Tribe. The permits may include, but are not limited to, Land Disturbance Permits and State Forest Practice Permits. The Contractor and all Subcontractors are responsible to hold the proper licenses and insurance required and obtain any permits or permissions necessary for the transportation of wood materials to the designated staging areas as described in the Scope of Work. The Tribe’s insurance requirements are included in Exhibit B. The selected Contractor will be required to obtain a Nooksack Indian Tribe annual business license at the cost of $100. The Tribe business license application can be found on the Tribe’s website at https://nooksacktribe.org/departments/administration/, scroll to the bottom of the page for the application and instructions.

1.3 Invoices
Invoices may be submitted bi-weekly (every two weeks) for tasks completed and wood material procured and delivered. All invoices will be paid within 30 days from date of invoice submission. Payment will be made only for the actual quantities of material procured and delivered or the actual work completed and accepted in conformance with the Contract. Detailed log procurement or delivery receipts must be included with invoices to receive payment.

Payment will be made for each of the Bid items that are included in the Quotation. The Tribe may retain 5% from each invoice until each Task is deemed complete and accepted in conformance with the Contract.

1.4 Bid Award
The Contract award will be based on cost estimates, proposed methods, availability, qualifications, references, experience working on similar projects, Native Preference factors and approval by the Tribe. All quotation materials shall be received by the Tribe’s Project Manager by March 12th, 2021 at 4:00 pm. The Tribe anticipates notifying Contractors of the Contract award by March 19th, 2021 and having the Contract finalized as soon as possible.

Before Contract award, the Tribe may choose to personally inspect the candidate wood material to ensure it is of satisfactory quality. The Tribe may reject the initial selected bid if the candidate wood material is of inferior quality, if the Contractor does not meet necessary qualifications, or if the Contractor is not
approved by the Tribal Council and/or the Tribe’s General Manager. Contractor must have a clean record, including zero violations within the past three years with the Washington State Department of Natural Resources, and all other related regulatory agencies.

The following may be required of the selected Contractor before award:

- Copies of applicable licenses and permits; and
- Arrange a meeting with the Tribe’s Project Manager to inspect the candidate wood materials and discuss method of delivery and tasks to be completed.

1.5 Complete and Partial Quotes
Quotes submitted that include the full quantity of requested wood material to be supplied will be given priority over quotes submitted for a portion of the requested supplied amount. However, in the event that no Contractor can supply the entire requested number of wood material to be supplied, is unable to facilitate the supply, hauling, or sorting of logs and wood materials, or for economic reasons, the Tribe will consider accepting partial quotes from more than one Contractor.

Contractors that anticipate quoting only a portion of the Contract must still submit the Contractor Response Forms with the quote reflecting the quantity of material they propose to supply, the tasks they propose to complete, the unit price per item and the total quotation cost.

1.6 Instructions to Bidders
To respond to this RFQ, please complete and submit the Contractor Response Forms included as Exhibit A. In addition, each Contractor responding to this request shall include any exceptions taken to the terms and conditions set forth in the example Contract Independent Contractor Agreement attached hereto as Exhibit B. Final Contract terms may vary with the exception of the insurance addendum. Exceptions and modifications to the Tribe’s Standard Contract for Services, which the Tribe deems material to its standard form, may be rejected and may result in rejection of a quote.

Contractors responding to this RFQ shall specifically designate and clearly label as “CONFIDENTIAL” any and all materials or portions thereof which they deem to contain trade secrets or other proprietary information that is exempt from public inspection and copying.

Quotations for the 2021 Log Contract for the Maple Creek Reach Project will be received at the offices of the Nooksack Tribe Natural & Cultural Resource Department until 4pm on March 12th 2021. Quotations received after the submittal deadline will not be considered. Electronic copies of quotations will be accepted via email to Eric Stover (estover@nooksack-nsn.gov) in the form of a PDF file(s). If proposals are sent electronically, original signed copies must be produced before the award of the Contract. Contractors will be notified of selected quote within 7 working days or sooner.

Mail or Hand Deliver To:

Nooksack Indian Tribe
Natural & Cultural Resources Department
Attention: Eric Stover
Mail: P.O. Box 157
Hand Deliver: 5016 Deming Road
Deming, WA 98244
2.0 Scope of Work

The Scope of Work for the Contract the Tribe is seeking quotes for has been categorized into nine tasks over the course of two years and summarized below. Each task is described in detail in the sections following.

2021

1) Task 1- Access Road and Staging Area Preparation.
2) Task 2- Supply, Storage, Delivery and Sorting of Wood Material for Project Phase 1
3) Task 3- (Additive Alternate Bid Item) Supply, Storage, Delivery and Sorting of Racking Logs for Project Phase 1
4) Task 4- (Additive Alternate Bid Item) Load, Haul and Deliver Racking Logs Supplied by BNSF for Project Phase 1

2022

5) Task 5- Access Road and Staging Area Preparation.
6) Task 6- Supply, Storage, Delivery and Sorting of Wood Material for Project Phase 2
7) Task 7 (Additive Alternate Bid Item) Supply, Storage, Delivery and Sorting of Racking Logs for Project Phase 2
8) Task 8 (Additive Alternate Bid Item) Load, Haul and Deliver Racking Logs Supplied by BNSF for Project Phase 2
9) Task 9 (Additive Alternate Bid Item) Minor Change

Heavy equipment used for this work shall be free of external petroleum-based products and shall be checked daily for leaks and any necessary repairs shall be completed before commencing work activities near waters of the State. The drive mechanisms (wheels, tracks, tires, etc.) of equipment shall not enter or operate within the wetted perimeter of any flowing channel. Fueling activities shall be done a minimum of 100 feet from any wetted channel or be placed within a secondary containment unit to prevent spillage of petro-chemicals. A petroleum spill kit shall be present on site for the duration of the Contractor’s work and log deliveries.

Tasks to be completed in 2021

2.1 Task 1- Access Road and Staging Area Preparation (2021)

The site access road and both staging areas are located off of Mount Baker Hwy. SR 542 approximately 1 mile east of the town of Maple Falls, WA Whatcom County (Figure 1). The access road is located on Washington State Department of Natural Resources (DNR) State lands and Whatcom Land Trust (WLT) property. Staging area 1 is located on DNR land and staging area 2 is located on WLT land. The access road is flat and approximately 1,700 feet in length. The contractor will be responsible for supplying and delivering hog fuel (as part of Task 2) to the site and placement of a 6” thick layer of hog fuel, as measured after compaction via excavator tracking, as surfacing for the existing dirt road and staging areas 1 and 2. The Contractor is responsible for maintaining the access road to ensure safe and efficient access to both Project Staging Areas over the course of their log deliveries. Additionally, up to 10 conifer and/or hardwood trees will be felled and staged in staging area 2 by contractor as directed by NIT project manager and as permitted by DNR/Washington State Department of Transportation (WSDOT).
This tree removal is necessary at the site entrance and staging area 1 to facilitate access with log trucks with trailers and heavy equipment.

Figure 1. Access road and staging area
2.2 Task 2- Supply, Storage, Delivery and Sorting of Wood Material for Project Phase 1 (2021)

This task consists of the supply, storage, delivery and sorting of wood material to the Maple Creek Reach Project Staging Areas as described below. See Figure 2 below for wood material quantities included in this task. No material substitutions will be accepted without prior written approval from the Tribe’s Project Manager. All materials, equipment, labor, and other miscellaneous items required to supply, deliver, stage and sort the wood materials in the designated staging areas shall be furnished by the Contractor unless otherwise noted. Due to the large quantity of wood material to be supplied for this contract, the Tribe is providing an option for the Contractor to procure, stage and store logs at an off-site location (to be arranged/provided by the Contractor). Information on off-site log storage and procurement payment is described in Section 2.2.3.

2.2.1 Quantity

The Contractor shall supply wood material as specified in Section 2.2.2. The Log Schedule with the estimated quantity, lengths, and diameter of wood material needed in each size category for phase 1 (Figure 2) excluding racking logs.

*Figure 2: Maple Creek Phase 1 Wood Material Schedule*

<table>
<thead>
<tr>
<th>Log Type</th>
<th>Log Specification</th>
<th>Unit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>RB-3</td>
<td>22&quot; MINIMUM DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>298</td>
</tr>
<tr>
<td>RD-5</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 50' LONG</td>
<td>EA</td>
<td>16</td>
</tr>
<tr>
<td>RD-4</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 40' LONG</td>
<td>EA</td>
<td>84</td>
</tr>
<tr>
<td>RD-3</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>12</td>
</tr>
<tr>
<td>RE-3</td>
<td>16&quot; - 18&quot; DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>24</td>
</tr>
<tr>
<td>D-6</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 60' LONG</td>
<td>EA</td>
<td>16</td>
</tr>
<tr>
<td>D-5</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 50' LONG</td>
<td>EA</td>
<td>20</td>
</tr>
<tr>
<td>D-4</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 40' LONG</td>
<td>EA</td>
<td>76</td>
</tr>
<tr>
<td>D-3</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>102</td>
</tr>
<tr>
<td>Slash</td>
<td>SLASH MATERIAL &lt; 6&quot; DIA.</td>
<td>CY</td>
<td>1,410</td>
</tr>
<tr>
<td>Hog Fuel</td>
<td>HOG FUEL MATERIAL</td>
<td>CY</td>
<td>1,000</td>
</tr>
<tr>
<td>Whole Cottonwood</td>
<td>8&quot; - 12&quot; DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>11</td>
</tr>
<tr>
<td>Cottonwood Pole</td>
<td>2&quot;- 4&quot; DIA. LOG WITHOUT ROOTWAD - 15' LONG</td>
<td>EA</td>
<td>14</td>
</tr>
</tbody>
</table>

2.2.2 Wood material Specifications

**General Requirements**

All wood material shall be green (harvested within 1 year of delivery). All logs shall be of sound quality and free of cracks, checks, splits, rot, unsound knots, infestations, decay, or defects that will materially impair the strength or durability of the log as determined by Tribe staff or the Project Engineer. Wood material shall not be burned or charred. Rootwads shall be clean of excessive soil and rock but washing is not required. All logs shall be free of preservatives and deleterious materials. Treated materials are not acceptable. Split trunks are not allowed including if one of the two trunks have been removed regardless of the log meeting the rest of the specifications. All logs shall have limbs removed.
Certification of log grades will not be required, but may be done if poor quality logs are encountered. Costs for the grading will be paid by the Contractor at no additional cost to the Tribe. Any wood material found to not meet specifications or found to be defective shall be removed from the site and replaced at no cost to the Tribe.

Logs shall be measured from both ends to ensure specifications are met. The length of each log and racking log is defined as an actual measured length, including rootwad if appropriate (see below). Log dimensions shown in Figure 2 do not include bark thickness; i.e., if bark is present on the logs the bark thickness will be subtracted from the log diameter when measuring logs to ensure they conform to size specifications. For ease of measurement bark thickness will be assumed to represent 2” of the log diameter when present at the location of measurement. Partially barked logs will be considered fully barked for the purposes of measurement. Bark shall remain intact to the extent possible given the mechanics of handling the logs.

Species for all RB-3 logs (30 ft in length, 22” minimum diameter rootwad logs) shall be 100% Douglas fir (Pseudotsuga menziesii). The remaining logs (with and without rootwads) shall be at least 80% Douglas fir and up to 20% Western red cedar (Thuja plicata). Deciduous trees, western or mountain hemlock and other species will not be accepted for Type RB, RD, RE, or D logs.

Logs Without Rootwads (Type D Logs)
Logs without rootwads shall conform to the size requirements specified in the Log Schedule where the specified diameter refers to the diameter measured within 4 feet of the largest cut end (butt) of the log. The length specified in the Log Schedule for logs without rootwads shall be measured from the smaller cut end (tip) of the log to the butt of the log. The minimum tip diameter of the log shall vary by log type; each log shall meet the minimum tip diameters specified in the table below.

<table>
<thead>
<tr>
<th>Log Type</th>
<th>Length (ft)</th>
<th>Butt Diameter (inches)</th>
<th>Minimum Diameter (Cut end, inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-6</td>
<td>60</td>
<td>18 – 22</td>
<td>12</td>
</tr>
<tr>
<td>D-5</td>
<td>50</td>
<td>18 – 22</td>
<td>12</td>
</tr>
<tr>
<td>D-4</td>
<td>40</td>
<td>18 – 22</td>
<td>13</td>
</tr>
<tr>
<td>D-3</td>
<td>30</td>
<td>18 - 22</td>
<td>14</td>
</tr>
</tbody>
</table>

Rootwad Logs (Type RB, RD, and RE logs)
Rootwad logs shall consist of a trunk section with a natural, large, full, intact, and complex rootwad structure containing multiple branches (roots) extending outward around the entire circumference of the rootwad structure. Rootwads shall be intact and strong enough to support the trunk of the log when laying horizontally. If in the opinion of the Tribe or the Project Engineer upon inspection that a rootwad log has a sparse or otherwise compromised root structure, said log will not be accepted as a rootwad log, but it may be acceptable as traditional log (log without rootwad) upon approval by the Tribe or the Project Engineer.

Rootwad logs shall conform to the size requirements specified in the Log Schedule where the specified diameter refers to the diameter of the trunk section measured at the diameter at breast height (DBH) defined as 4.5 ft. above ground when the tree was standing. Rootwad Logs shall have a minimum diameter from tip-to-tip of the multiple branch root structure (rootwad) of 4 to 6 feet for an 18-inch minimum diameter log, and 6 to 8 feet for a 22-inch minimum diameter log, determined as measuring from tip-to-tip through the centerline of the bole from roots which are large enough to support the weight of the log
while resting on the ground. The length specified in the Log Schedule for rootwad logs shall be measured from the end (or bottom) of the root structure to the other cut end (tip) of the log. The minimum tip diameter of the log shall vary by log type; each log shall meet the minimum tip diameters specified in the table below.

<table>
<thead>
<tr>
<th>Log Type</th>
<th>Length (ft)</th>
<th>Butt Diameter (inches)</th>
<th>Minimum Diameter (Cut end, inches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>RB-3</td>
<td>30</td>
<td>22 Min.</td>
<td>18</td>
</tr>
<tr>
<td>RD-5</td>
<td>50</td>
<td>18 – 22</td>
<td>12</td>
</tr>
<tr>
<td>RD-4</td>
<td>40</td>
<td>18 – 22</td>
<td>13</td>
</tr>
<tr>
<td>RD-3</td>
<td>30</td>
<td>18 – 22</td>
<td>14</td>
</tr>
<tr>
<td>RE-3</td>
<td>30</td>
<td>16 – 18</td>
<td>12</td>
</tr>
</tbody>
</table>

**Whole Cottonwood**

Whole cottonwood trees will have as many branches intact as possible. Species shall be Black cottonwood (*Populus trichocarpa*). Logs shall consist of a trunk section with a natural, large, full, intact, and complex rootwad structure containing multiple branches (roots) extending outward around the entire circumference of the rootwad structure. Rootwads shall be intact and strong enough to support the trunk of the log when laying horizontally. If in the opinion of the Tribe or the Project Engineer upon inspection that a rootwad log has a sparse or otherwise compromised root structure, said log will not be accepted. Delivery of this log type will be coordinated with the NIT project manager and shall not be harvested or delivered before an agreed upon time has been scheduled. These trees are intended to be live at the time of installation in the river therefore they will be delivered sometime between July 15th and August 30th, once authorized by the NIT project manager.

**Cottonwood Pole**

Cottonwood poles shall be Black cottonwood (*Populus trichocarpa*) with limbs removed. Cottonwood poles shall be live cuttings with all buds and limbs trimmed. The length of the live cutting shall be 15 ft with a base diameter of 2-4 inches. Delivery of Cottonwood poles shall be coordinated with the NIT project manager; Cottonwood poles shall not be harvested or delivered before an agreed upon time has been scheduled. Cottonwood poles are intended to be live at the time of installation in the river therefore they will be delivered sometime between July 15th and August 30th, once authorized by the NIT project manager.

**Slash**

Slash Material shall be composed of young coniferous trees, saplings, roots, limbs, branches, brush and tree tops generated during land clearing activities and can be any native northwest coniferous species. Slash Material may be of various sizes less than 6 inches in diameter. Slash Materials shall not contain cobbles. Slash Material passing a 4-inch sieve shall not exceed 10% of the total slash material by volume and shall not contain silty or clayey material that could cause turbidity when placed in water. Slash Material shall be free of invasive species such as knotweed, Himalayan blackberry, Scotch broom or other species designated as a noxious weed by the Washington State Noxious Weed Control Board or Whatcom County’s Noxious Weed Program.
2.2.3 Wood Procurement, Storage, & Delivery

The Contractor shall have at least 80% of the supplied wood material (80% of each log category, racking and slash) specified in the Log Schedule delivered to the Project Staging Area 2, or if agreed to by NIT project manager staging area 1, by June 12th, 2021. The remaining supplied wood material specified in the Log Schedule shall be delivered to the Project Staging Areas (1 and 2) no later than July 30th, 2021. All logs are to be clearly marked with a mutually agreed upon color of spray paint on the bole and cut end using the log ID listed in the column “Log Type” in figures 2, 3, 5, 6, 7, and 8.

Procurement and Temporary Off-Site Storage

Due to the large quantity of logs to be supplied for this contract, the Contractor has the option to procure and temporarily store logs at an off-site location of their choice before delivery to the project site to ensure payment for a portion of the total Contract as logs are procured. This option will only be allowed for logs (with and without rootwads), not racking logs or slash material. If the Contractor chooses to procure and temporarily store logs at an off-site location of their choice before the anticipated delivery timeline to the Project Staging Areas, it should be done in conformance with the requirements outlined below.

All logs (with and without rootwads) shall be stored and decked at a secure, off-site storage yard under the Contractor’s control. The storage yard location shall be no more than 120 miles from Deming, WA; however, proximity of storage yard to Deming, WA, may be a factor in contractor selection. The Contractor shall coordinate with the Tribe to have the logs inspected and approved by Tribe staff or the Project Engineer before invoices are submitted. Each log shall be accessible for visual inspection by Tribe staff or the Project Engineer and labeled with the log length or log ID painted on the cut end and visible using lead-free, blaze-orange, survey marking paint. The Contractor shall take special care when storing and handling all wood materials to protect them from damage. The Contractor shall replace at its own expense any logs damaged during storage and handling activities. The Tribe or Project Engineer may reject logs because of damage or nonconformity with these specifications.

The Contractor will be responsible for supplying a detailed log procurement receipt when Tribe staff come to inspect and inventory the logs. The procurement receipt should include the log ID (RD3, D3, etc.), length, diameter, species and quantity for logs procured. The Tribe will not make payment for logs invoiced that were not included in a procurement receipt. Payment to the Contractor will be approved upon Tribe staff inspection and tagging of the stored logs for 25% of the price quote for each log and will require the Contractor to submit an invoice with copies of the procurement receipts for all logs being billed. Once the Tribe issues the 25% payment to the Contractor, the logs become the property of the Tribe. The remaining 75% cost for the logs will be paid after final delivery has been made to the Project Staging Areas as outlined below.

Delivery & Inspection

The Contractor shall deliver all wood materials to the Project Staging Areas as described below. The Contractor shall supply all necessary equipment, labor, materials, and tools to supply, transport, deliver, sort and segregate the wood materials on-site. All delivery costs shall be included in the unit price quote for each bid item, no separate delivery fee may be applied.

For logs previously inspected and approved at the Contractor’s temporary storage yard, the Contractor shall be responsible for delivering all approved material to the Project Staging Areas in-tact and in the same condition as before inspection and approval. The Contractor shall take special care when storing,
handling, and transporting all wood materials to protect them from damage. The Contractor shall replace at its own expense any wood material damaged during storage, transportation, and/or handling activities. The Tribe may reject wood material because of damage or nonconformity with these specifications.

All logs delivered to the Project Staging Areas that were not previously stored and inspected at the Contractor’s temporary storage yard shall be marked with a different color marking paint than the logs from the Contractor’s storage yard. Upon delivery to the Project Staging Areas, the Contractor shall sort and segregate the wood material based on category length and type (rootwad vs non-rootwad) at the Project Staging Areas. Slash material shall be placed in windrows 8 feet tall, 20 feet wide and 20 feet long to allow for Tribe staff to inventory the slash material. Windrows height and width shall be to the surface plane where void space is less than 50% by visual inspection.

The Contractor shall coordinate with the Tribe to have all wood material inspected and approved before payment will be made. The Tribe will make every effort to have staff available to inspect and confirm delivery at least daily when deliveries are being made, although the Tribe reserves the right to reschedule inspections based on Tribe staff availability. The Contractor will be responsible for supplying a detailed log delivery receipt for each delivery. The “Delivery Receipt Template“ provided in Attachment A is an example of the information that should be provided on the delivery receipts. The Tribe will not make payment for wood material invoiced that was not included in a delivery receipt.

Any logs not accepted by Tribe staff or the Project Engineer after delivery because of damage or nonconformity with these specifications shall be removed from the project site at the Contractor’s own expense and no payment will be made for said material. Minor weathering and fading will not be cause for rejection.

Delivery Schedule and Location

There are two Project Staging Areas described below where the Contractor will deliver wood materials. The schedule of deliveries to the Project Staging Areas will be dependent on several factors including the timing of project permits and landowner permissions and access road work. The Tribe anticipates obtaining all necessary permits and permissions by April or May 2021. The access road work needed to access Project Staging Areas 1 and 2 will be complete within 14-days of receiving all necessary permits and permissions and giving the Notice to Proceed for the access road work.

The Contractor may begin wood material deliveries to the Project Staging Areas upon being notified in writing by the Tribe of the Notice to Proceed. The Contractor and the Tribe shall agree upon a delivery schedule before the Contractor making any deliveries to the Project Staging Areas. The Contractor shall give at least 72-hour notice before commencing deliveries to the Project Staging Areas. Hours of delivery are flexible but should typically be Monday through Friday from approximately 8:00 a.m. to 6:00 p.m., depending on final landowner agreements. No deliveries shall be made on holidays or weekends to ensure Tribe staff will be present for inspection and inventory of the deliveries. The Contractor shall communicate any changes to the delivery schedule with Tribe’s Project Manager throughout the delivery process and shall give at least 24-hour notice before any schedule changes to allow the Project Manager sufficient time to schedule inspection and inventory of materials by Tribe staff.

The Contractor shall deliver at least 80% of the supplied wood material (80% of each log category, racking logs and slash material) specified in this RFQ as tasks 1, 2, 3, 4 (2021 Tasks) to Project Staging Area 2 by June 12th, 2021 and by June 12th 2022 for tasks 5, 6, 7, 8 (2022 Tasks). The remaining supplied wood
material specified in the 2021 tasks shall be delivered to the Project Staging Areas (1 and 2) no later than July 30th, 2021 and July 30th, 2022 for 2022 tasks. The Schedule of deliveries may be modified, with prior approval of the Tribe, at any point during the course of the Contract.

Project Staging Areas 1 and 2
The majority of wood material will be delivered to the Project Staging Area 2. Staging area 1 is intended to only be used if necessary due to lack of space at staging area 2. Both staging areas are located at the same access trail off of Mount Baker Hwy. SR 542 approximately 1 mile east of the town of Maple Falls, WA Whatcom County (Figure 1). The access road is located on Department of Natural Resources (DNR) State lands and Whatcom Land Trust property. The access road is approximately 1,700 feet long and is flat. The contractor will be responsible for supplying and delivering hog fuel to the site and placement of 6” thick layer of hog fuel, after compaction via excavator tracking, to the existing road and staging areas. The Contractor is responsible for maintaining the access road to ensure safe and efficient access to both Project Staging Areas over the course of their log deliveries.

During the winter of 2021, the Tribe will work with DNR to obtain a Road Use Permit (RUP) and the Whatcom Land Trust to obtain a Landowner Agreement (LOA) to allow the Contractor to haul wood materials on the access trail. The Tribe anticipates obtaining the RUP and LOA in April 2021. The Contractor shall comply with the conditions of the RUP (example shown in Attachment B) and will be required to sign the DNR RUP Addendum in Exhibit B. During the mandatory site visit contractors will have an opportunity to walk and inspect the access trail and staging areas to determine any constraints and bid the project based on site conditions.

2.3 Task 3 (Additive Alternate Bid Item) Supply, Storage, Delivery and Sorting of Racking Logs for Project Phase 1 (2021)
It is the intent of the NIT to either have the selected contractor supply the materials in this section (Task 3) or have the contractor load, haul and deliver the same specified logs donated by BNSF as specified in task 4 below. It is also possible that the Tribe will request a combination of partial SOW of both tasks 3 and 4 to get the quantity of logs needed as listed in figure 3 below. As such the NIT has included the same logs as additive bid items for tasks 3 and 4. If all task 3 logs are not available by May 30th 2021 the NIT may request the contractor to supply the remaining logs needed up to the full amount listed in figure 3.

2.3.1 Quantity
The Contractor shall supply wood material as specified below under the heading racking. The Log Schedule with the estimated quantity, lengths, and diameter of wood material needed in each size category for Task 3 is in (Figure 3).

*Figure 3 Task 3 Wood Material Schedule*

| Task 3 | Racking | RACKING LOG 6" - 12" DIA. LOG - 30' - 40' LONG | EA | 6,249 |

*Racking*
Racking logs shall be any native northwest species with or without rootwads. All racking logs shall have limbs removed. Grade can be Utility or Cull logs, in accordance with Official Rules of the Pacific Rim Log Scaling and Grading Bureau, Inc, Lacey WA. Racking logs shall be 30 to 40 feet in length, and their length shall be measured as described above for Type D, RB, RD, and RE logs for Racking Logs with and without
rootwads, respectively, except I regards to tip diameter. Racking Logs shall have minimum diameters of 6 to 12 inches as measured at the largest cut end; the minimum diameter at the cut end of any racking piece shall be 4 inches. Racking Logs shall have the following size class percentages: 40% at 6 to 8 inches in diameter; 40% at 8 to 10 inches in diameter, and 20% at 10 to 12 inches in diameter based on visual inspection.

2.4 Task 4- (Additive Alternate Bid Item) Load, Haul and Deliver Racking Logs Supplied by BNSF for Project Phase 1 (2021)

The Tribe may be receiving a wood material donation of racking logs from the BNSF Railway (BNSF) and the Tribe may enter into a Wood Donation Agreement with them. If BNSF has wood material available as a result of standard railway tree removal maintenance BNSF has offered to transport wood material from areas throughout the Pacific Northwest via rail to the railway adjacent to the Tribe’s Administrative Offices in Deming, WA. BNSF will offload the wood material from their rail cars to one of the storage areas identified in Figure 4. This task involves loading and hauling the wood material donated by BNSF from the storage area(s) in Deming, WA to the Project Staging Areas 1 and 2 (Figure 1). The area where the BNSF wood material may be stored in Deming is currently being negotiated between the Tribe and BNSF, but will likely be in one of the three areas identified in red in Figure 4. The Contractor will be responsible for loading the wood from the storage area(s) and hauling wood material to the Project Staging Areas. The BNSF wood material to be delivered to the Project Staging Areas is identified in Figure 5.

*Figure 4: Deming BNSF Wood Storage Areas*
The quantity of BNSF wood material that will need to be loaded and hauled by the Contractor is still being finalized, however the Tribe has estimated the quantities shown in Figure 5 based on recent conversations with BNSF. The details regarding measurement and payment are provided in Sections 2.11 and 2.12 respectively.

Tasks to be completed in 2022

2.5 Task 5 Access Road and Staging Area Preparation (2022)
The site access road and both staging areas are listed in section 2.1 (Figure 1) where task 1 work occurs in 2021. This task shall be completed in 2022 to improve the access road by adding additional hog fuel in areas needing additional material as directed by the NIT project manager. The work is expected to be completed prior to starting work in tasks 6-8. The intent is to repair areas impacting at the conclusion of tasks 1 to 4 during spring and summer 2021 in order to prepare the road for 2022 work listed below. The contractor will be responsible for supplying and delivering hog fuel (as part of Task 6) to the site and reestablishment of a 6" thick layer of hog fuel, as measured after compaction via excavator tracking, as surfacing for the existing road and staging areas 1 and 2 (Figure 1). The Contractor is responsible for maintaining the access road to ensure safe and efficient access to both Project Staging Areas over the course of their log deliveries.

2.6 Task 6- Supply, Storage, Delivery and Sorting of Wood Material for Phase 2 of Project (2022)
This task consists of the supply, storage, delivery and sorting of wood material to the Maple Creek Reach Project Staging Areas as described in section 2.2.3 Wood Procurement, Storage, and Delivery. See Figure 6 below for wood material quantities included in Task 6. All specifications for Task 6 shall conform to the same specifications listed in section 2.2.2 Wood Material Specification.

<table>
<thead>
<tr>
<th>Task 4</th>
<th>Racking</th>
<th>RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</th>
<th>EA</th>
<th>6,249</th>
</tr>
</thead>
</table>

The Tribe has estimated the quantities shown in Figure 5 based on recent conversations with BNSF.
2.7 Task 7 (Additive Alternate Bid Item) Supply, Storage, Delivery and Sorting of Racking Logs for Phase 2 of the Project (2022)

2.7.1 Quantity
The Contractor shall supply wood material as specified in Section 2.1.2. The Log Schedule with the estimated quantity, lengths, and diameter of wood material needed for Phase 2 (Figure 7).

*Figure 7 Maple Creek Phase 2 contractor supplied racking wood material schedule*

| Task 7 Additive Bid Item | Racking | RACKING LOG 6” - 12” DIA. LOG - 30’ - 40’ LONG | EA | 5,357 |

Specifications shall conform to those listed in section 2.3.1 for racking material.

2.8 Task 8 (Additive Alternate Bid Item) Load, Haul and Deliver Racking Logs Supplied by BNSF For Project Phase 2 (2022)
The Tribe may be receiving a wood material donation of racking logs and from the BNSF Railway (BNSF) and the Tribe may enter into a Wood Donation Agreement with them. If BNSF has wood material available as a result of standard railway tree removal maintenance BNSF has offered to transport wood material from areas throughout the Pacific Northwest via rail to the railway adjacent to the Tribe’s Administrative Offices in Deming, WA. BNSF will offload the wood material from their rail cars to one of the storage areas identified in Figure 4. This task involves loading and hauling the wood material donated by BNSF from the storage area(s) in Deming, WA to the Project Staging Areas 1 and 2. The area where the BNSF wood material will be stored in Deming is currently being negotiated between the Tribe and BNSF, but will likely be in one of the three areas identified in red in Figure 4. The Contractor will be responsible for loading the wood from the storage area(s) and hauling wood material to the Project Staging Areas. The BNSF wood material to be delivered to the Project Staging Areas is identified in Figure 8.

*Figure 8 Maple Creek Phase 2 BNSF supplied racking wood material schedule*

| Task 8 Additive Bid Item | Racking | RACKING LOG 6” - 12” DIA. LOG - 30’ - 40’ LONG | EA | 5,357 |

2.9 Task 9 (Additive Alternate Bid Item) Minor Change (2021 and 2022)
If Tribe desires to order a change in the Work, it may request a written Change Order proposal from Contractor. The change order shall not exceed 10% of the sum of Task 1-8 therefore the amount of this task (Task 9) will be determined after a bid amount is accepted and known by both parties and the amount will be reflected in the final contract.

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 Tribe, or within such other period as mutually agreed.

2. Contractor’s Change Order proposal shall be for 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, Tribe 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, Tribe 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 Tribe’s written approval. All Work done pursuant to any Tribe-directed change in the Work shall be executed in accordance with the Contract Documents.

5. If Tribe 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 NNR 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 The Tribe and begin to keep and maintain complete, accurate and specific daily records. Contractor shall give The Tribe access to any such records.

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 The Tribe. 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 Tribe’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.

2.10 Liquidated Damages

Time is of the essence on each and every portion of the Contract. Should the delivery not be completed on or before the time outlined in this Scope of Work (SOW) then, at the discretion of the Tribe, the Contractor would be subject to a penalty of $500.00 per day for each and every day the Contractor delays ELJ construction due to a wood material supply deficiency.

2.11 Measurement

The unit Contract price shall be full compensation for all labor, materials, tools, and equipment necessary to supply, transport, deliver, offload and sort the Contractor supplied and BNSF supplied wood materials procured and delivered by the Contractor.

Tasks 1 and 5

Road and staging area preparation will be measured by inspection of the NIT project manager.

Tasks 2, 3, 4, 6, 7, 8

Logs (with and without rootwads) and racking logs procured for the Maple Creek Reach Phases 1 and 2 project by the Contractor will be measured per each log decked and staged at the Contractor’s temporary storage yard and delivered to the Project Staging Areas. Unit prices for each log and racking log shall include the cost to deliver them to the Project Staging Areas (no separate delivery fees may apply) as specified in Section 2.2.

Slash and hog fuel material procured and delivered by the Contractor will be measured per cubic yard delivered to the project site before unloading from the delivery vehicle.

Task 9

Depending upon the agreed to SOW these items will be paid per each for logs, as described above, per cubic yard for slash and hog fuel material, or lump sum for additional road and staging area preparation.

2.12 Payment

Payment for wood material procured by the Contractor will be divided into two items. One payment item will be for all wood material inspected and approved at the Contractor’s storage yard; the other payment item will be for delivery to the project site.

“Logs” (with and without rootwads) will be paid per each inspected and approved at the Contractor’s storage yard for 25% of the total unit cost. The remaining 75% of the unit cost will be paid per each upon final delivery, inspection and approval to the Project Staging Areas as specified in Section 2.2.

“Logs” (with and without rootwads) procured and delivered directly to the Project Staging Areas (not previously stored at the Contractor’s storage yard) will be paid per each delivered, inspected and approved at the Project Site.
“Racking” will be paid per each delivered, inspected and approved at the Project Site.

“Slash Material” will be paid per cubic yard delivered, inspected and approved at the Project Site.

“Hog Fuel Material” will be paid per cubic yard delivered, inspected and approved at the Project Site.

“Road and Staging Area Preparation” will be paid per lump sum after all work in that task has been inspected by NIT project manager and deemed completed.

“Minor Change” will be paid either per Each, Cubic Yard, or Lump Sum depending on the agreed to SOW.
Exhibit A: Contractor Response (Quotation) Forms

Log Contract
North Fork Nooksack Maple Creek Reach Restoration Project

Contractor Contact Information
Business Name: ________________________________________________________________

Name of Contact Person: _______________________________________________________

Mailing Address: ______________________________________________________________

Email: ________________________________________________________________

Phone Number ____________________________ Fax Number _________________________________

EIN/UBI No.: _________________________________________________________________

Washington State Contractor’s License: __________________________________________

References

List the names and contact information for at least three (3) customers for whom the Contractor has provided or performed similar goods and/or services. Should any reference submitted by a Contractor be found unsatisfactory in demonstrating Contractor’s experience in forestry practices and the furnishing, handling, and transporting of large quantities of raw wood material, the Nooksack Indian Tribe, at its sole option, may reject that Contractor’s bid. Include a separate set of references for each Subcontractor if applicable. References must be submitted with the quotation.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Agency</th>
<th>Contact &amp; Phone Number</th>
<th>Contract Dates</th>
<th>Contract Amount</th>
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ARTICLE 1 - QUOTATION RECIPIENT

1.01 This Quote is submitted to:

Nooksack Indian Tribe
Natural & Cultural Resources Department
Attn: Eric Stover
P.O. Box 157 (mailing address) or
5016 Deming Rd. (physical address)
Deming, WA 98244
(360) 592-5140 ext. 3141
estover@nooksack-nsn.gov

The Nooksack Tribe is herein referred to as the “Tribe”.

1.02 The undersigned Contractor proposes and agrees, if this Bid is accepted, to enter into an Agreement with Tribe in the form included in the Request for Quotations documents herein and to perform all Work as specified or indicated in these documents for the prices and within the time indicated in these documents and in accordance with the other terms and conditions of these documents.

ARTICLE 2 - CONTRACTOR’S ACKNOWLEDGEMENTS

2.01 The undersigned Contractor agrees, if this Proposal is accepted by the Tribe, to enter into an Agreement with the Tribe using the Contract form(s) included in the proposal documents herein, and to perform all Work as specified or indicated in these documents for the prices and within the time indicated in these documents and in accordance with the other terms and conditions of these documents.

ARTICLE 3 - CONTRACTOR’S REPRESENTATIONS

3.01 In submitting this Quotation, Contractor represents that:

3.01.1 Contractor has examined and carefully studied these Documents, other related data identified in these Documents, and the following Addenda, receipt of which is hereby acknowledged (if applicable):

<table>
<thead>
<tr>
<th>Addendum No.</th>
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</table>
3.01.2 Contractor has visited the job site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress and performance of the Work.

3.01.3 Contractor is familiar with and is satisfied as to all Federal, State and local laws and regulations that may affect cost, progress and performance of the Work.

3.01.4 Contractor has carefully studied all bid attachments and appendices.

3.01.5 Contractor is aware of the general nature of work to be performed by Tribe and others at the site that relates to the Work as indicated in the Request Documents.

3.01.6 The Request Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Quote is submitted.

3.01.7 Contractor will submit written evidence of its authority to do business in the State of Washington, where the project is located, not later than the date of its execution of the Agreement.

3.01.8 Contractor will obtain a business license from the Nooksack Indian Tribe no later than the date of its execution of the Agreement. An application form can be obtained from the Nooksack Indian Tribe Administration Building located at 5176 Deming Rd., Deming, WA 98244.

ARTICLE 4 - FURTHER REPRESENTATIONS

4.01 Contractor further represents that:

4.01.1 This Quote is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;

4.01.2 Contractor has not directly or indirectly induced or solicited any other Contractor to submit a false or sham Quote;

4.01.3 Contractor has not solicited or induced any individual or entity to refrain from quoting;

4.01.4 Contractor has not sought by collusion to obtain for itself any advantage over any other Contractor or over the Tribe.
ARTICLE 5 - QUOTE SCHEDULE

5.01 Contractor will complete the Work in accordance with the Contract Documents for the following unit prices:

5.01.1 Quantities are not guaranteed. Final Payment will be based upon actual quantity of work performed. Tribe reserves the right to reduce the scope of work without invalidating the Quote if funds now available are insufficient for completion of the total project.

5.02 Tribe reserves the right to award a portion, or all work to the Contractor based on comparison of price and qualifications with those of other Contractors.

ARTICLE 6 - TIME OF COMPLETION

6.01 Contractor agrees that the Work will be substantially completed and ready for final payment in accordance with Scope of Work or within the number of calendar days indicated in the Agreement.

6.02 Contractor accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.
## Price Quote Form

### Maple Creek Reach Log Contract-Price Quote Form

#### Base Bid Items

<table>
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<tr>
<th>Task</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
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</table>
| Task 1
| 2 | 2021 | RB-3 | 22" MINIMUM DIA. LOG WITH ROOTWAD - 30' LONG | EA | 298 | $ | $ |
| 3 | 2021 | RD-5 | 18" - 22" DIA. LOG WITH ROOTWAD - 50' LONG | EA | 16 | $ | $ |
| 4 | 2021 | RD-4 | 18" - 22" DIA. LOG WITH ROOTWAD - 40' LONG | EA | 84 | $ | $ |
| 5 | 2021 | RD-3 | 18" - 22" DIA. LOG WITH ROOTWAD - 30' LONG | EA | 12 | $ | $ |
| 6 | 2021 | RE-3 | 16" - 18" DIA. LOG WITH ROOTWAD - 30' LONG | EA | 24 | $ | $ |
| 7 | 2021 | D-5 | 18" - 22" DIA. LOG WITHOUT ROOTWAD - 60' LONG | EA | 16 | $ | $ |
| 8 | 2021 | D-4 | 18" - 22" DIA. LOG WITHOUT ROOTWAD - 40' LONG | EA | 20 | $ | $ |
| 9 | 2021 | D-3 | 18" - 22" DIA. LOG WITHOUT ROOTWAD - 30' LONG | EA | 102 | $ | $ |
| 11 | 2021 | Slash | SLASH MATERIAL < 6" DIA. | CY | 1,410 | $ | $ |
| 12 | 2021 | Hog Fuel | HOG FUEL MATERIAL | CY | 1,000 | $ | $ |
| 13 | 2021 | Whole Cottonwood Pole | 8" - 12" DIA. LOG WITH ROOTWAD - 30' LONG | EA | 11 | $ | $ |
| 14 | 2021 | Cottonwood Pole | 2" - 4" DIA. LOG WITHOUT ROOTWAD - 15' LONG | EA | 14 | $ | $ |

#### Task 2

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<th>Task 2</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
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<th>Unit</th>
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<td>HOG FUEL MATERIAL</td>
<td>CY</td>
<td>250</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

#### Task 5

<table>
<thead>
<tr>
<th>Task 5</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>13</td>
<td>2022</td>
<td>NA</td>
<td>Road Preparation (2022)</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

#### Task 6

<table>
<thead>
<tr>
<th>Task 6</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>2022</td>
<td>RB-3</td>
<td>22&quot; MINIMUM DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>194</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>2022</td>
<td>RD-5</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 50' LONG</td>
<td>EA</td>
<td>10</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>2022</td>
<td>RD-4</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 40' LONG</td>
<td>EA</td>
<td>80</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>2022</td>
<td>RD-3</td>
<td>18&quot; - 22&quot; DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>16</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>2022</td>
<td>RE-3</td>
<td>16&quot; - 18&quot; DIA. LOG WITH ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>18</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>2022</td>
<td>D-6</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 60' LONG</td>
<td>EA</td>
<td>10</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>2022</td>
<td>D-5</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 50' LONG</td>
<td>EA</td>
<td>21</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>2022</td>
<td>D-4</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 40' LONG</td>
<td>EA</td>
<td>56</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>2022</td>
<td>D-3</td>
<td>18&quot; - 22&quot; DIA. LOG WITHOUT ROOTWAD - 30' LONG</td>
<td>EA</td>
<td>102</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>2022</td>
<td>Slash</td>
<td>SLASH MATERIAL &lt; 6&quot; DIA.</td>
<td>CY</td>
<td>1,220</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>2022</td>
<td>Hog Fuel</td>
<td>HOG FUEL MATERIAL</td>
<td>CY</td>
<td>250</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

#### Additive Alternate Bid Items

<table>
<thead>
<tr>
<th>Task 3</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>2021</td>
<td>Racking</td>
<td>CONTRACTOR SUPPLIED RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</td>
<td>EA</td>
<td>6,249</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Base Bid; Task 1, 2, 5, 6 Total Cost

[Tribe restoration projects exempt from taxes]

<table>
<thead>
<tr>
<th>Task 4</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>31</td>
<td>2021</td>
<td>Racking</td>
<td>BNSF SUPPLIED RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</td>
<td>EA</td>
<td>6,249</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Task 3 Cost

<table>
<thead>
<tr>
<th>Task 5</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>2022</td>
<td>Racking</td>
<td>CONTRACTOR SUPPLIED RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</td>
<td>EA</td>
<td>5,357</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Task 4 Cost

<table>
<thead>
<tr>
<th>Task 7</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>2022</td>
<td>Racking</td>
<td>BNSF SUPPLIED RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</td>
<td>EA</td>
<td>5,357</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Task 7 Cost

<table>
<thead>
<tr>
<th>Task 8</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>2022</td>
<td>Racking</td>
<td>BNSF SUPPLIED RACKING LOG 6&quot; - 12&quot; DIA. LOG - 30' - 40' LONG</td>
<td>EA</td>
<td>5,357</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

### Estimated Task 8 Cost

<table>
<thead>
<tr>
<th>Task 9</th>
<th>Bid Item No.</th>
<th>Year</th>
<th>Log Type/ID</th>
<th>Log Specification or Description</th>
<th>Unit</th>
<th>Total</th>
<th>Unit Price</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>35</td>
<td>2022</td>
<td>Minor Change (Shall be 10% of the Total Base Bid Task 1, 2, 5, 6)</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
<td>$ TBD</td>
<td>$</td>
</tr>
</tbody>
</table>

### Estimated Task 9 Cost
Quotes for the work identified in these Documents shall be for all items included in the RFQ and Scope of Work documents. A “NO BID” or “$0” quotation entered in the total quotation summary above may result in disqualification of the quote. The Tribe reserves the right to award the Contract amount based on any or all of the unit items listed to restrict the Contract amount to the funds available, and to reject any or all unit items for any reason whatsoever and waive formalities as the interest of the Tribe may require.
This Agreement, made this ______ day of ______________, 2020, between ______________, hereinafter called “Contractor”, and The Nooksack Indian Tribe, hereinafter called “Tribe”, witnesseth

I. EFFECTIVE DATE AND SCOPE OF WORK

1. Effective Dates. This Agreement shall become effective as of the date of execution by Tribe, and shall continue until_____________________, unless terminated in accordance with the provisions in Section 18 of this agreement. Time is of the essence.

2. Project Covered. Tribe hereby engages Contractor to provide the following services, hereinafter called the “Project”:

[X] Request for Quotations and Scope of Work Attached

3. Method of Performing Services. Contractor will determine the method, details and means of performing the above-described services in compliance with the terms of this Agreement. Contractor shall provide all services in accordance with applicable local, tribal, state, federal laws, and the terms and conditions of this Agreement.

4. No Training or Instructions. Tribe enters into this Agreement based on Contractor's demonstrated ability to perform the type of services that it believes, and that Contractor has represented, are needed to accomplish the Project. Consequently, Tribe does not contemplate providing Contractor with any training or instructions with respect to the Project.

5. Employment of Assistants. Contractor may, at Contractor’s own expense, employ such assistants, as Contractor deems necessary to perform the services required of Contractor by this Agreement. Tribe may not control, direct, or supervise Contractor's assistants or employees in the performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of unemployment insurance, Social Security, disability insurance and other applicable withholdings pursuant to applicable tribal, federal, or state law. Contractor agrees to provide proof of workers' compensation insurance for assistants he or she engages. Contractor is responsible for acts or omissions of employees, subcontractors and other persons performing portions of work under the contract for the Contractor. Contractor agrees to hold Tribe harmless against any and all liabilities attributable to the obligations imposed on Contractor under this Section. Contractor shall employ no employee of the Nooksack Indian Tribe.

6. Representations. Contractor represents and warrants that:
   a. Contractor has no obligations, legal or otherwise, inconsistent with the terms of this Agreement or with Contractor’s undertaking this relationship with Tribe;
b. The performance of the services called for by this Agreement do not and will not violate any applicable law, rule or regulation, or any proprietary or other right of any third party; and,
c. Contractor has not entered into or will not enter into any agreement (whether oral or written) in conflict with this Agreement.

7. **Labor, Tools and Equipment.** Contractor shall furnish all labor, equipment, supervision, transportation, supplies, and incidentals required to perform services under this Agreement. Contractor is not required to purchase or rent any tools, equipment, or services from Tribe.

II. **INSURANCE AND INDEMNIFICATION**

8. **Insurance.** Contractor, prior to commencing work, shall provide at his/her own cost the following:

   See Insurance Addendum

   [X] Copy attached.

9. **Indemnification Agreement.** Contractor agrees to protect, defend, indemnify and hold harmless the Nooksack Indian Tribe, Tribal Council, and its officers, employees and agents free from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liability of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceeding or causes of action of every kind and character in connection with, or arising directly or indirectly out of this Agreement and/or the performance hereof. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or application for any therefore) or of any other tangible or intangible statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his sole expense and agrees to bear all other costs and expenses related hereto, even if it (claims, etc.) is groundless, false or fraudulent.

Further, the Contractor shall also defend, indemnify, and hold the State and its officers and employees harmless from all claims, demands, or suits at law or equity arising in whole or in part from the alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions by the Contractor or the Contractor’s agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the Contractor may be legally liable, in performance of the Work under this Agreement or arising out of any use in connection with the Agreement of methods, processes, designs, information or other items furnished or
communicated to State, its agents, officers and employees pursuant to the Agreement; provided that this indemnity shall not apply to any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secret, patents, proprietary information, know-how, copyright rights or inventions resulting from State’s, its agent’s, officers’ and employees’ failure to comply with specific written instructions regarding use provided to State, its agents, officers and employees by the contractor, its agents, employees, subcontractors or vendors, of any tier, or any other persons for whom the contractor may be legally liable.

The Contractor specifically assumes potential liability for actions brought by the Contractor’s own employees or its agents against the State and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the state industrial insurance law, Title 51 RCW.

III. PAYMENT AND REPORTING

10. **Amount of payment.** Unless different payment terms are agreed upon, all payments are made net 30 days of date of invoice per Nooksack Indian Tribe Accounting Policies. Upon satisfactory completion of the Project and in consideration for the services to be performed by Contractor, Tribe agrees to pay Contractor: ____________________________________________________________________.

The Tribe agrees to pay Contractor for their services and materials according to the Request for Quotations and Scope of Work attached.

11. **Taxpayer Identification Number.** Prior to commencing the Project, Contractor must provide Tribe with a valid Employer Identification Number (EIN) from the IRS or in the absence of an EIN, a social security number. Contractor must complete and submit a duly executed Form W-9 or Form W-8BEN, if applicable.

[ ] Copy attached.

12. **Business License Requirement.** Prior to commencing the Project, and prior to any payment being made hereunder, Contractor must obtain a Business License from the Nooksack Indian Tribe unless otherwise exempt. An application form can be obtained from the Nooksack Indian Tribe Administration Building located at 5176 Deming Rd., Deming, WA 98244 or at www.nooksacktribe.org.

[ ] Copy attached.

In the event the Contractor does not have a business license at the time the Tribe processes the first payment pursuant to this Agreement, Contractor specifically authorizes and agrees that the Tribe may withhold the first one hundred dollars ($100.00) due hereunder for payment of the full annual licensing fee.
13. **Tax Reporting and Filing.** Contractor acknowledges and agrees that he or she shall be responsible (as a self-employed individual) for filing all tax returns, tax declarations, and tax schedules, and for the payment of all taxes required, when due, with respect to any and all compensation earned by Contractor under this Agreement. Tribe will not withhold any employment taxes from compensation it pays Contractor. Rather, Tribe will report the amount it pays Contractor on IRS Form 1099, to the extent required to do so under applicable Internal Revenue Code provisions and state or local law. Contractor is not Tribe’s employee, and Contractor is responsible for paying all required state, local and federal taxes.

14. **Expenses.** Contractor shall be responsible for all costs and expenses incidental to the performance of services to Tribe, including but not limited to; all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. Tribe shall not be responsible for expenses incurred by Contractor in performing services for Tribe.

IV. **INDEPENDENT CONTRACTOR STATUS**

15. **Independent Contractor.** It is the express intent of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of Tribe. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Tribe and Contractor or any employee or agent of Contractor. All work product developed by Contractor shall be deemed owned and assigned to Tribe. This Agreement is not authority for Contractor to act for Tribe as its agent or make commitments for Tribe. Contractor retains the discretion in performing the tasks assigned within the scope of work specified. Both parties acknowledge that Contractor is not an employee for state of federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement so long as the performance of these services does not interfere with the completion of the Project.

16. **No Benefits.** None of the benefits, if any, that are provided by Tribe to its employees shall be available to Contractor (or his employees, if any, which for purposes of this paragraph shall be included in the term "Contractor"). Contractor's exclusion from benefit programs maintained by Tribe is a material term of the terms of compensation negotiated by the Parties, and is not premised on Contractor's status as a non-employee with respect to Tribe. To the extent that Contractor may become eligible for any benefit programs maintained by Tribe (regardless of the timing of or reason for eligibility), Contractor hereby waives the right to participate in these programs. Contractor's waiver is not conditioned on any representation or assumption concerning Contractor's status under the common law test. Contractor agrees that, consistent with an independent contractor status, Contractor will not apply for any government-sponsored benefits that are intended to apply to employees, including, but not limited to, unemployment benefits.

17. **Contractor’s Business Activities.**
a. Contractor is an independent contractor and may engage in other business activities at
   the same time service is provided to Tribe.

b. Contractor shall not during the term of this Agreement solicit Tribe’s employees or
   accounts on behalf of Contractor or another entity.

c. Contractor shall devote such time, attention, and energy to the business and affairs of
   Tribe as requested by Tribe, and in any event no less that the amount of time required
   to do a satisfactory completion of the required Project.

V. TERMINATION AND NOTICE

18. Termination of Agreement. This Agreement may be terminated prior to the date listed in
    Section 1 for any of the following reasons.

   a. Default or Material Breach. Either party may terminate this Agreement immediately upon
      a default or Material Breach by the other party of any term or condition, if such breach
      continues uncured for thirty (30) days following written notification from the non-
      breaching party. For the purposes of this Section, a Material Breach of this Agreement
      shall include, but not be limited to the following: failure to provide services as specified in
      Section 2, failure to maintain required insurance coverage as specified in Section 8, or
      failure to complete project within the time specified in Section 1.

   b. Failure to Make Agreed-Upon Payments. In the event the Tribe fails to pay Contractor all
      or any part of the compensation set forth in Section 10 of this Agreement, Contractor may
      terminate this Agreement if such failure is not remedied by Tribe within thirty (30) days of
      receipt of written notice from Contractor of the breach.

   c. For Convenience. The Tribe, by written notice, may terminate this Agreement, in whole,
      or in part, when it is in Tribe’s best interest. If this Agreement is terminated, Tribe shall
      be liable only for payment under the payment provisions of this contract for services
      rendered before the effective date of termination.

19. Notices. Any notice provided for or concerning this Agreement shall be in writing and be
    deemed sufficiently given when sent by certified or registered mail to the respective address as
    set forth in this section:

   If to Contractor:

   If to Tribe: Nooksack Indian Tribe
                Natural & Cultural Resources Department
VI. GENERAL

20. Confidential Information. Contractor agrees that all confidential documents, work product and information (including but not limited to this Agreement and any information or documents related to this Agreement or the performance of services hereunder) received or otherwise obtained from the Tribe pursuant to this Agreement will be received in strict confidence and will be used only for the purposes of performing under this Agreement. Except with respect to a request with a regulatory agency, Contractor will not disclose any such information to any third party without obtaining the prior written consent of the Tribe, and Contractor will disclose such information only to such of its officers, employees, and agents that have a need to know such information for the purposes contemplated by this Agreement. Further, Contractor shall not publish, advertise or otherwise use for any promotional purpose, any image of the Project or associated with the Project obtained while fulfilling the terms of this Agreement, without the prior written consent of the Tribe.

21. Assignment. The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

22. No Third Party Beneficiaries. This Agreement is made solely and specifically for the benefit of the parties hereto and their permitted successors and assigns. No other person shall have any rights, interests, claims, or benefits hereunder.

23. Cooperation of Tribe. Tribe agrees to comply with all reasonable requests of Contractor (and provide access to all documents) reasonably necessary to the performance of Contractor’s duties under this Agreement.

24. Drug and Alcohol Policy. Contractor and his or her employees are expected to be free from the effects of drug or alcohol use or abuse while performing services required
pursuant to this Agreement or otherwise conducting business for or in the name of Tribe or a Tribal entity.

25. Certification Regarding Debarment. The Contractor certifies, by execution of this Agreement, that neither he or she, nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the Washington State Labor and Industries.

[ ] SAM LIST VERIFICATION ATTACHED

[ ] L&I VERIFICATION ATTACHED

26. Sovereign Immunity Not Waived. Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities.

27. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Nooksack Indian Tribe. The parties hereto agree that all actions and proceedings relating directly or indirectly hereto shall be litigated in the Tribal Court of the Nooksack Indian Tribe, and the parties expressly consent to the jurisdiction of the Tribal Court of the Nooksack Indian Tribe and to venue therein and consent to service of process in any such action or proceeding by certified registered mail of the summons and complaint therein directed to the parties at their respective addresses set forth in this Agreement. By agreeing to this venue, the Tribe does not waive its sovereign immunity, or its right to raise sovereign immunity as a defense.

28. Waivers. The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and condition, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

29. Captions, Construction, Drafting Ambiguities. The titles to the sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

30. Independent Counsel. Contractor acknowledges that they have had the opportunity to consult legal counsel in regard to this Agreement. Contractor has read and understands this Agreement and is fully aware of its legal effect and that Contractor has entered into it freely
and voluntarily and based on Contractor’s own judgment, and not on any representations or promises other than those contained in this Agreement.

31. **Coordination of Agreement Documents, Request for Quotations, Scope of Work and Addenda.** The complete Agreement includes the following parts:

- [ ] Independent Contractor Agreement - #1;
- [ ] Addendum 1: Insurance Addendum (Construction - Non NAHSDA)
- [ ] Addendum 2: Standard T&C (Construction – Non NAHSDA)
- [ ] Addendum 3: Request for Quotations, Scope of Work and related Exhibits and Attachments for the 2020 Log Contract: North Fork Nooksack Farmhouse Phase 4 Restoration Project
- [ ] Addendum 4: Debarment Certification
- [ ] Addendum 5: Byrd Anti-Lobbying Certification ($100,000.00)
- [ ] Addendum 6: Drug-free Workplace Requirements
- [ ] Addendum 7: DNR Road Use Permit Addendum

These parts complement each other in describing a complete work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any work or materials clearly implied in the Agreement even if the Agreement does not mention it specifically.

- [ ] Any inconsistency in the parts of the Agreement shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 3, 4, 5, 6 and 6; 2 presiding over 3, 4, 5, and 6; and so forth):

On the Contract Plans, Working Drawings, and Standard Plans, figured dimensions shall take precedence over scaled dimensions. This order of precedence shall not apply when work is required by one part of the Agreement but omitted from another part or parts of the Agreement. The work is required in one part must be furnished even if not mentioned in other parts of the Agreement. If any part of the Agreement requires work that does not include a description for how the work is to be performed, the work shall be performed in accordance with standard trade practice(s). For purposes of the Agreement, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the work.

32. **Property Damage.** Any damage to property resulting from work of Contractor described in this agreement shall be repaired/replaced by Contractor at Contractor's expense. Repair and replacement shall be to pre-damaged condition or better and subject to Tribe and landowner approval.

33. **Tribal, state, and federal laws.** The Contractor shall strictly comply with all tribal, local, state, and federal laws, ordinances and regulations applicable to and governing this project, and shall procure or comply with all necessary governmental licenses and permits, which are to be displayed, as appropriate, and be presented on demand of the Tribe for inspection and copying.

34. **Funding.** The Tribe’s obligation under this contract and the effective date of this contract are expressly contingent upon the availability of appropriated funds from which payment

Independent Contractor Agreement
Between __________ and
the Nooksack Indian Tribe
Page 8 of 10
for contract purposes can be made. No legal liability on the part of the Tribe for any payment may arise for performance under this contract until funds are made available to the Tribe for performance and until the Contractor receives notice of availability, to be confirmed in writing by the appropriate Tribal official.

35. **Entire Agreement of the Parties.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for Tribe, and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

36. **Further Assurances.** Contractor, at the request of the Tribe, shall execute all documents and take all other actions necessary to carry out the provisions and purposes of this Agreement. This shall specifically include execution of any amendment, addenda, or further assurances necessary to comply with federal law or regulation.

37. **Amendment.** This Agreement may not be amended, modified, rescinded, or assigned without the prior written consent of both parties.

38. **Severability.** If any provision of this Agreement is unenforceable for any reason, it shall be stricken from this Agreement but shall not affect the intention of the parties or any other provision of this Agreement.

39. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. Facsimile or electronic counterparts of this Agreement shall suffice as originals for all purposes.
The Parties have duly executed this Agreement as of the date first written above.

**CONTRACTOR**

By (Print Name): ________________________
Signature: ______________________________
Title: __________________________________
Date: __________________________________
SSI# or EIN#: ___________________________

**NOOKSACK INDIAN TRIBE**

By (Print Name): Katherine Romero
Signature: ______________________________
Title: General Manager
Date: __________________________________

Also By: George Swanaset Jr.
Title: Natural & Cultural Resources Director
Date: ________________________________
ADDENDUM 1: INSURANCE ADDENDA TO INDEPENDENT CONTRACTOR AGREEMENT BETWEEN
AND THE
NOOKSACK INDIAN TRIBE

The Contractor understands and agrees that it shall obtain and keep in force the following policies of insurance:

1. **Owners and Contractors Protective (OCP).** Contractor shall maintain an OCP policy with a minimum limit of liability of $3,000,000 per occurrence and in the aggregate for bodily injury and property damage liability. Each policy shall specify the Tribe, the Natural Resources Department, and all officers and employees of the Tribe as Named Insured. The OCP policy shall not be subject to a deductible or contain provisions for a deductible.

2. **Workers Compensation (WC).** Contractor shall maintain WC insurance policy in compliance with RCW Title 51.

   [ ] Copy attached.

3. **Unemployment Insurance (UI).** Contractor shall maintain a UI policy in compliance with RCW Title 50.

   [ ] Copy attached.

4. **Commercial General Liability (CGL).** Contractor shall maintain a CGL policy with a minimum limit of liability of $1,000,000 per occurrence and in the aggregate for bodily injury and property damage.

   [ ] Copy attached.

5. **Commercial Automobile Liability (CAL).** Contractor shall maintain a CAL policy with a minimum limit of liability of $1,000,000 per occurrence for bodily injury and property damage. This insurance shall include for bodily injury and property damage the following coverage: (1) owned vehicles/equipment; (2) hired/rented/leased vehicles/equipment; and, (3) non-owned vehicles/equipment. Each policy shall specify the Tribe, the Natural Resources Department, and all officers and employees of the Tribe as Additional Insured. This coverage may be any combination of primary, umbrella, or excess liability coverage.

   [ ] Copy attached.

Further, the following terms and conditions shall apply to all policies held:

1. All policies shall be with companies or through sources approved by the Office Tribal Attorney of the Nooksack Indian Tribe.
2. The policies shall be kept in force from the execution date of the Agreement.

3. Each policy shall specify the Tribe, the Natural Resources Department, Herrera Environmental, Roger McMunn, and all officers and employees of the Tribe as Additional Insured with the exception of the OCP policy.

4. Said insurance coverage shall be primary and noncontributory insurance with respect to the Insureds and the Additional Insureds.

5. Any insurance or self-insurance beyond that specified in this Addenda that is maintained by the Tribe shall be in excess of such insurance required pursuant to this Addenda and be maintained for the sole benefit of the Tribe.

6. All insurance coverage required by this Addenda shall be written and provided by “occurrence-based” policy forms rather than by “claims made” forms.

7. The coverage limits to be provided by the Contractor for itself and to the Tribe and Additional Insureds pursuant to this Addenda or any Special Provision, shall be on a “per project” aggregate basis with the minimum limits of liability as set forth herein for both general liability and products/completed operations claims.

8. The Additional Insured coverage required under this Addenda for products/completed operations claims shall remain in full force and effect for not less than three (3) years following Substantial Completion of the project.

9. If the Contractor maintains, at any time, coverage limits for itself in excess of limits set forth in this Addenda or any Special Provision, then those additional coverage limits shall also apply to the Tribe and the Additional Insured. This includes, but is not limited to, any coverage limits provided under any risk-financing program of any description, whether such limits are primary, excess, contingent, or otherwise.

10. All insurance policies and coverages required under this Addenda shall contain a waiver of subrogation against the Tribe and any Additional Insureds, and their respective departments officers, officials, agents, and employees for losses arising from Work performed by or on behalf of the Contractor.

11. Unless specifically noted otherwise in the Contract Documents, the Parties to this Agreement do not intend by any of the provisions of this Agreement to cause the public or any member thereof or any other person to be a third-party beneficiary of the Contract Documents. Nothing in this Agreement authorizes anyone not a party to this Agreement or a designated third-party beneficiary to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement. It is the further intent of the Tribe and the Contractor in executing the Agreement that no individual, firm, corporation, or any combination
thereof that supplies materials, labor, services, or equipment to the Contractor for the
performance of the Work shall become thereby a third-party beneficiary of this Agreement. The
Contract Documents shall not be construed to create a contractual relationship of any kind
between the Tribe and a Subcontractor or any other Person except the Contractor.

12. Prior to execution of the Agreement, the Contractor shall file with the Project Manager of the
Nooksack Indian Tribe, PO Box 157, Deming, WA 98244, ACORD Form Certificates of
Insurance evidencing the minimum insurance coverages required under this Addenda. Within 30
days of being awarded a Contract, the Contractor shall provide the Project Manager with
complete copies, which may be electronic copies, of all insurance policies required under this
Addenda and any Special Provisions.

13. The Contractor shall provide written notice to the Project Manager and the Project Manager of
any policy cancellations within two business days of receipt of cancellation.

14. Failure on the part of the Contractor to maintain the insurance as required, or not to provide
certification and copies of the insurance prior to the time specified herein, shall constitute a
material breach of Agreement. Upon such breach, the Tribe may, after giving 5-business days’
notice to the Contractor to correct the breach, immediately terminate the Agreement or, at its
discretion, procure or renew such insurance and pay any and all premiums in connection
therewith; any sums so expended to be repaid to the Tribe on demand, or at the sole discretion of
the Tribe, offset against funds due the Contractor from the Tribe.

15. Each certificate or policy shall require that, thirty (30) days prior to cancellation or material change in
the policy, notice thereof shall be given to the Project Manager of the Nooksack Indian Tribe. All
such notices shall name Contractor and identify the contract number.

Contractor Initials acknowledging this Addendum ______________
ADDENDUM 2
STANDARD TERMS AND CONDITIONS

I, __________________________, (Contractor), ____________ (Title) understand and agree to comply with all applicable federal, tribal, state and local laws and regulations, including the following:

1. Comply with all applicable federal, tribal, state, and local nondiscrimination laws and/or policies, including but not limited to the Americans with Disabilities Act, Civil Rights Act, Age Discrimination Act, Executive Order 11375 (“Equal Opportunity Employer”), and as supplemented at 41 C.F.R. Chapter 60;

2. Comply with the Copeland “Anti-Kickback” Act (18 U.S.C. § 874), and as supplemented at 29 C.F.R. Part 3;

3. Comply with the Davis-Bacon Act (40 U.S.C. §276a to 276a-7), and as supplemented at 29 C.F.R. Part 5;

4. Comply with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-330), and as supplemented at 29 C.F.R. Part 5, all federal and state safety and health regulations, including the Occupational Safety and Health Act (29 U.S.C. § 651) and the Washington Industrial Safety and Health Act (Chapter 49.17 R.C.W.);

5. Comply with the Buy American Act;


7. Comply with State Environmental Act (Chapter 43.21C R.C.W.) and National Environmental Protection Act (42 U.S.C. § 4321), and all applicable water and land use laws and regulations, their implementing regulations, rules and standards;

8. Comply with state Industrial Insurance Act (Chapter 51 R.C.W.);

9. Comply with Architectural Barriers Act (42 U.S.C. § 4151);


11. Comply with Chapter 77.85 RCW, Chapter 420 WAC, and published agency policies;

12. Comply with Executive Order 05-05 or the National Historic Preservation Act (16 U.S.C. § 470) and document compliance;

13. Comply with the Drug-Free Workplace Act (41 U.S.C. § 8101) and provide documentation as necessary;

14. Comply with Trafficking Victims Protection Act (22 U.S.C. §§ 7101 et. seq.);

15. Comply with 2 C.F.R. Pt. 180 regarding OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) and pass these requirements to comply with this subpart to each person you enter into a Covered Transaction at the next lower tier;


17. Comply with mandatory standards and policies relating to energy efficiency which are contained in a state energy conservation plan issued in compliance in the Energy Policy and Conservation Act (Pub. L. 94-163), if applicable;

18. Comply with any federal notice requirement pertaining to reporting, any requirements and regulations pertaining to patent rights with respect to any discovery of invention which arises or is developed in the course of or under this contract, and any requirements and regulations pertaining to copyrights and rights in data.

Contractor Initials acknowledging this Addendum ______________
ADDENDUM 4
CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION ADDENDUM

I, ______________________, (Contractor), __________________ (Title) hereby declare and certify under penalty of perjury of the laws of the Nooksack Indian Tribe and the United States of America, the following is true and correct to the best of my knowledge and belief:

1. The CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

2. The CONTRACTOR shall provide immediate written notice to the Tribe if at any time the CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the United States Code and the Code of Federal Regulations. You may access the Code of Federal Regulations at www.gpo.gov.

4. The CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

5. The CONTRACTOR further agrees by signing this agreement, that it will include this clause titled “CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION” without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. Pursuant to 2 C.F.R. §180, the CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

7. CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of the underlying funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier contractors or sub-contractors, are not suspended or debarred, and will make this proof available to the Department upon request. CONTRACTOR must run a search in www.sam.gov and print a copy of completed searches to document proof of compliance.

9. (If applicable) The Contractor further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the Washington State Labor and Industries.

Contractor Initials acknowledging this Addendum ______________
CERTIFICATIONS AND REPRESENTATIONS
(FEDERAL FUNDS IN EXCESS OF $100,000.00)
BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

For all contracts and/or other agreements to persons or entities carrying out any purpose of a federal award wherein the contract and/or other agreement exceeds $100,000.00. 2 C.F.R. Pt. 200, App. II(I); 31 U.S.C. § 1352(b)(5)

The following certification and disclosure regarding payments to influence certain federal transactions are made per the provisions contained of 31 U.S.C. § 1352(b)(5) and 2 C.F.R. Pt. 200, App. II(I).

I, ______________________, (Contractor), __________________(Title) hereby declare and certify under penalty of perjury of the laws of the Nooksack Indian Tribe and the United State of America, the following is true and correct to the best of my knowledge and belief:

No Federal appropriated funds (monies paid pursuant to this Contract) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

I will include the above language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

Contractor Initials acknowledging this Addendum

_________________________
ADDENDUM 6
DRUG-FREE WORKPLACE ACT CERTIFICATION

The Contractor understands and agrees that it will comply with the Drug-Free Workplace Act, which may include:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing a drug-free awareness program to inform employees about:
   a. The dangers of drug abuse in the workplace;
   b. The contractor's policy of maintaining a drug-free workplace;
   c. Any available drug counseling, rehabilitation and employee assistance programs, and
   d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (1);

4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the contract, the employee will:
   a. Abide by the terms of the statement; and
   b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after each conviction;

5. Notifying the Tribe within ten days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction;

6. Taking one of the following actions, within 30 days of receiving notice under subparagraph (4)(b), with respect to any employee who is so convicted:
   a. Taking appropriate personnel action against such an employee, up to and including termination; or
   b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1)-(6).

Contractor Initials acknowledging this Addendum ______________
The Parties to the underlying Agreement further agree to this Road Use Permit Addendum (“Addendum”) for Contractor’s use of the Road identified in Road Use Permit (“RUP”) No. ___________ (Addendum 7).

1. Contractor agrees to comply with all provisions within the Addendum 3, which is to be attached once approved.

2. Further, Contractor agrees to the following:

   A. Contractor’s insurance policies shall name the State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees as additional insureds.

   B. **Contractor to indemnify State**: Contractor shall defend (with counsel acceptable to State’s Attorney General, whose approval shall not be unreasonably withheld), indemnify, and hold State of Washington, acting by and through the Department of Natural Resources (DNR), its officials, agents and employees (indemnified parties) harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

      1. **Sole negligence of Contractor**: The sole negligence of Contractor or any of its Subcontractors;

      2. **Concurrent negligence**: The concurrent negligence of Contractor, or any Subcontractor, but only to the extent of the negligence of Contractor or such Subcontractor; and

   B. **Employee action and RCW Title 51**: In any action against the indemnified parties by any employee of Contractor, its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity as to the indemnified parties only, in accordance with RCW Title 51.

Contractor Initials acknowledging this Addendum

________________________
STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands

ROAD USE PERMIT

Permit No. 50-100571

THIS PERMIT, made and entered into this 4 th day of May, 2020, by and between the STATE OF WASHINGTON, acting by and through the Department of Natural Resources (DNR), herein called the "State" and NOOKSACK INDIAN TRIBE, herein called the "Grantee."

Permission. State, for and in consideration of the terms and conditions specified herein, hereby grants to the Grantee, a nonexclusive permit ("Permit") to use a road over and across a strip of land, hereinafter defined as the "Premises." The Premises comprises the following two contiguous parts in Whatcom County, Washington:

Existing Road on Private Land: That existing road in Sections 10 and 15 of Township 39 North, Range 5 East, W.M., described in that permanent exclusive easement dated January 17, 1962, recorded under Auditor's File No. 937786 in the records of Whatcom County, Washington (hereafter “Existing Road on Private”).

Existing Road on State Land: That existing road in Gov't Lots 8 and 9, S1/2 NW1/4, W1/2 SW1/4, NE1/4 SW1/4 of Section 1; SE1/4 SE1/4 of Section 2 and the NE1/4, NW1/4, NE1/4 SW1/4, NW1/4 SE1/4 of Section 11 all located in Township 39 North, Range 5 East, W.M. (hereafter “Existing Road on State”).

The Premises is located approximately as shown on Exhibit A. The Existing Road on Private and Existing Road on State shall be confined to 40 feet in width, 20 feet each side of the existing centerline. The word "Road" shall mean roads now existing on the Premises, or any segment of such road.

Purpose. Grantee shall be limited to the use of this Permit to access the left bank gravel bar of the North Fork Nooksack River for the North Fork Nooksack Farmhouse Restoration Project Phase 2B as described by the State Environmental Policy Act Environmental Checklist, dated March 28, 2014, and associated Determination of Nonsignificance dated May 2, 2014, numbered SEP2014-00024 and on file with Whatcom County (hereafter “SEPA”) (hereafter “Project”). Grantee is permitted access for hauling timber and rock to the Project site, as well as for road abandonment and administrative access associated with the Project.
This Permit is limited to the above-described activities on DNR-managed uplands and the interest acquired by State in Whatcom Land Trust ownership over the Existing Road on Private State's upland ownership in Section 1, Township 39 North, Range 5 East does not extend past the Ordinary High Water Mark of the Nooksack River.

The Permit is subject to the terms and conditions hereinafter set out.

**Consideration.** The consideration paid by the Grantee to State is as follows: EIGHT THOUSAND, ONE HUNDRED FOURTY-SIX AND 40/100 DOLLARS ($8,146.40), which includes a three thousand, eight hundred fifty-eight and 29/100 dollars ($3,858.29) Access Road Revolving Fee.

**Termination.** This Permit shall terminate April 30, 2021, or earlier when requested by the Grantee; provided, however, that this Permit may be suspended or terminated upon the breach of any of the conditions herein.

**Reservations.** State reserves all rights incident to fee ownership of the Premises and the profits thereon (including timber) and the right of use for any purpose including but not limited to the right to remove profits within the Premises; the right at all times to cross and re-cross the Premises at any place on grade or otherwise; and the right to use, maintain, patrol, reconstruct or repair the Premises. State may grant to third parties any and all rights reserved.

**Export Restrictions.** Any export-restricted timber originating from state land under this Permit shall not be exported until processed. Grantee shall comply with all applicable requirements of WAC 240-15-015 (relating to the prohibitions on export and substitution), WAC 240-15-025 (relating to reporting requirements), and WAC 240-15-030 (relating to enforcement). All export restricted timber from state lands shall be painted and branded in compliance with WAC 240-15-030(2). If Grantee knowingly violates any of the prohibitions in WAC 240-15-015, Grantee shall be barred from bidding on or purchasing export restricted timber as provided. Grantee shall comply with the Export Administration Act of 1979 (50 U.S.C. App. Subsection 2406(i)) which prohibits the export of unprocessed western cedar logs harvested from state lands.

**Compliance with Laws.** For all activities conducted pursuant to this Permit, each party shall, at its own expense, comply with all applicable laws in effect now and as hereafter modified.

**Permittees.** The Grantee may permit its respective employees, agents, contractors, licensees, lessees, purchasers of timber or other profits and their agents, herein individually referred to as "Permittee" and collectively referred to as "Permittees", to exercise the rights granted to the Grantee herein subject to the insurance, hold harmless and indemnification requirements specified below.

Acts or omissions of the Permittees operating under this Permit shall be deemed an act of the Grantee. Restrictions or requirements placed on the Grantee herein shall apply equally to the Permittees.
**Maintenance.** Maintenance is defined as work normally necessary to preserve and keep the roads in their present condition or as hereafter improved. At a minimum, the roads will be maintained to meet applicable forest practice standards set forth in Chapter 222-24 WAC as now written or hereafter amended.

When a road is being used solely by one party, that party shall be solely responsible for maintaining that portion of the road so used to the standards existing at the time sole use is commenced.

During periods when either party and/or other parties with an easement or license jointly use the road(s), or any portion thereof, the cost of maintenance and resurfacing shall be allocated among such users on the basis of their respective use including that of their Permittees. During periods of joint maintenance, the users shall meet at times to be set by mutual agreement and establish necessary maintenance provisions. Such provisions shall include, but not be limited to the following:

The appointment of a maintainer, which may be one of the parties or any third party, to perform or contract the maintenance; the extent of resurfacing necessary to keep the road safe and to reduce environmental impacts; and a method of payment by which each party using the road or a portion thereof shall pay its pro rata share of the cost of maintenance and resurfacing.

**Repairs.** Grantee shall repair, or cause to be repaired at its sole cost, that damage to the Road arising out of its use which is in excess of that which it would cause through normal and prudent usage. Damage caused by an unauthorized user shall be repaired at the expense of the Grantee if the Grantee is the sole user of the road, State if State is the sole user of the road and shared jointly if there is joint use of the road.

**Improvements.** Unless the parties agree in writing to share the cost of improvements in advance of such improvements being made, such improvements shall be solely for the account of the improver.

**Road Abandonment.** The Road between MP 6.5 and MP 6.75 shall be abandoned to Northwest Region's Road Abandonment Guidelines, attached as Exhibit D, by the termination date of this Permit or by such other date or event agreed upon in writing by State, at its sole discretion.

**Compliance with the State’s HCP.** The Premises are located within the State's Habitat Conservation Plan area in connection with Incidental Take Permit No. TE812521-1 (ITP) as supplemented by Permit No.1168 (collectively ITP). Grantee and all Permittees must comply with the terms and conditions set forth in Exhibit B while operating on the Premises.

**Prior Rights.** This Permit is subject to any rights and valid claims previously conveyed by State, and to any rights and valid claims pending on said Premises. Grantee rights herein are
subject to all matters of public record and to all prior unrecorded or recorded easements, permits, leases and options affecting said lands or Grantee rights across, over or upon such lands. Grantee rights herein are also subject to the rights of State to use its own lands for any and all legal purposes including the use of the land by third parties with the permission of State.

**Operational Restrictions.** Site-specific operational requirements are listed in Exhibit C. Non-compliance with these requirements shall constitute a breach of contract and may result in State suspending operations until the breach is remedied.

**Forest Practices Application.** Grantee shall require its contractor responsible for road maintenance, road abandonment and any other activity allowed by this Permit and regulated by the Washington State Department of Natural Resources Forest Practices Division (DNR-Regulatory) to sign a Change of Operator form as the operator prior to starting any regulated activities.

**Permits.** Prior to starting work on the Premises, Grantee shall provide State copies of all permits acquired for the project.

**Damage.** Grantee shall take all reasonable precautions to protect State-owned timber, crops and improvements. The Grantee must notify State two (2) weeks in advance of completion of said operations for the purpose of inspection for compliance with the terms hereof.

Grantee shall pay State for any damage to timber, crops and improvements not identified and paid for under the terms and conditions of this Permit. State shall appraise the damage at market value at the time of damage and bill Grantee for said damages at said value.

**Waste.** Grantee shall not cause nor permit any filling activity to occur in or on the premises, except by prior written approval of State. Grantee shall not deposit refuse, garbage, or other waste matter or use, store, generate, process, transport, handle, release, or dispose of any hazardous substance, or other pollutants in or on the premises except in accordance with all applicable laws.

The term hazardous substance means any substance or material as those terms are now or are hereafter defined or regulated under any federal, state, or local law including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA 42 USC 9601 et seq.), or the Washington Model Toxic Control Act (MTCA RCW 70.105D.010.).

Grantee shall immediately notify State if the Grantee becomes aware of any release or threatened release of hazardous substance on the premises or adjoining property. If a release of hazardous substance occurs in, on, under, or above the premises arising out of any action of the Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, the Grantee shall, at its sole expense, promptly take all actions necessary or advisable to clean up, contain, and remove the hazardous substance in accordance with applicable laws.
**Survey Markers.** Grantee shall not destroy any land survey monuments marking local control points, geodetic control points, and land boundary survey corners without prior written approval from the landowner, which shall not be unreasonably withheld. Land survey monuments that must necessarily be disturbed or destroyed during construction or maintenance activities must be adequately referenced and replaced, at the Grantee's expense, under the direction of a Professional Land Surveyor, licensed in the State of Washington, in accordance with all applicable laws of the State of Washington in force at the time of construction, including but not limited to RCW 58.24, and all Department of Natural Resources regulations pertaining to preservation of such monuments. As directed under Chapter 332-120 WAC, a Land Surveyor or Engineer must submit an application with the Department of Natural Resources for permission to temporarily remove or destroy a survey monument.

**Fire Prevention and Control.** The Grantee shall be responsible for satisfying the requirements of the laws of the State of Washington pertaining to Forest Protection and, in addition thereto, the Grantee shall during the closed season of April 15 through October 15 contact State who shall determine any extra requirements pertaining to burning procedure, blasting, watchman, extra patrol, pumpers, tankers, fire hoses, fire tools, etc., which are deemed necessary for prevention and suppression of fire which may result from the Grantee's operations.

**Insurance.** Before using any of said rights granted herein and at its own expense, Grantee shall obtain and keep in force during the term of this Permit and require its contractors, sub-contractors, or other permittees to obtain while operating on the premises, the following liability insurance policies, insuring Grantee against liability arising out of its operations, including use of vehicles. The limits of insurance shall not be less than as follows:

(a) **Commercial General Liability (CGL) insurance** with a limit of not less than $1,000,000 per each occurrence or Personal Liability insurance, as applicable, under a personal liability policy, commercial liability insurance policy, or package property and liability insurance policy. If such CGL insurance contains aggregate limits, the general aggregate limits shall be at least twice the "each occurrence" limit, and the products-completed operations aggregate limit shall be at least twice the "each occurrence" limit.

(b) **Employer's liability ("Stop Gap") insurance**, and if necessary, commercial umbrella liability insurance with limits not less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

(c) **Business Auto Policy (BAP) insurance**, and if necessary, commercial umbrella liability insurance with a limit of not less than $1,000,000 per accident, with such insurance covering liability arising out of "Any Auto".
(d) Grantee and its workers are covered by Grantees Workers' Compensation Program and will continue to be so covered during the entire term of this Permit. Grantee waives all rights of subrogation against State for recovery of damages to the extent they are covered by workers compensation, employers' liability, commercial general liability or commercial umbrella liability insurance. All contractors, subcontractors, or other Permittees of Grantee must comply with all State of Washington workers' compensation statutes and regulations.

All insurance should be purchased on an occurrence basis and should be issued by companies admitted to do business within the State of Washington and have a rating of A- or better in the most recently published edition of Best's Reports. Any exception to the State's requirements shall be reviewed and approved in advance by the Risk Manager for the Department of Natural Resources. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The State of Washington, Department of Natural Resources, its elected and appointed officials, agents and employees shall be named as an additional insured by the Grantee and its Permittees on all general liability, excess, and umbrella insurance policies.

Before using any said rights granted herein, Grantee shall furnish State with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements specified above. Certificate(s) must reference the State's permit number.

State shall be provided written notice before cancellation or non-renewal of any insurance referred to herein, as prescribed in statute (Chapter 48.18 RCW or Chapter 48.15 RCW).

Grantee shall include all Permittees as insureds under all required insurance policies or require separate certificates of insurance and endorsements for each. Contractors, sub-contractors and permittees of Grantee must comply with all insurance requirements stated herein.

Failure of contractors, sub-contractors and permittees to comply with State's insurance requirements does not limit Grantee liability or responsibility.

Grantee shall furnish State with certificates of insurance and endorsements for all Permittees prior to Permittees operating on the Premises.

All insurance provided by the Grantee in compliance with this Permit shall be primary as to any other insurance or self-insurance programs afforded to or maintained by State. Grantee waives all rights against State for recovery of damages to the extent these damages are covered by general liability or umbrella insurance maintained pursuant to this Permit and not the result of negligence of the State.
By requiring insurance herein, State does not represent that coverage and limits will be adequate to protect Grantee, and such coverage and limits shall not limit Grantee(s) liability under the indemnities and reimbursements granted to State in this Permit.

If Grantee is self-insured, evidence of its status as a self-insured entity shall be provided to State. If requested by State, Grantee must describe its financial condition and the self-insured funding mechanism.

**Hold Harmless and Indemnification.** Grantee shall include a hold harmless and indemnification clause in any contract or third party authorization substantially in the form described below, whenever Grantee allows its contractors or other non-tribal third Permittees to exercise Grantee’s rights under higher risk activities such as excavation, rock pit operations, road building and grading, and logging. Copies of executed contracts between Grantee and Contractors with a hold harmless and indemnification clause acceptable to State shall be forwarded to State before using any said rights granted herein.

A. Contractor [authorized third party] to indemnify State: Contractor shall defend (with counsel acceptable to State’s Attorney General, whose approval shall not be unreasonably withheld), indemnify, and hold State of Washington, acting by and through the Department of Natural Resources (DNR), its officials, agents and employees (indemnified parties) harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

1. Sole negligence of Contractor [authorized third party]: The sole negligence of Contractor [authorized third party] or any of its Subcontractors;

2. Concurrent negligence: The concurrent negligence of Contractor [authorized third party], or any Subcontractor, but only to the extent of the negligence of Contractor [authorized third party] or such Subcontractor; and

B. Employee action and RCW Title 51: In any action against the indemnified parties by any employee of Contractor [authorized third party], its Subcontractors, Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor [authorized third party] waives immunity as to the indemnified parties only, in accordance with RCW Title 51.
Notwithstanding the above, Grantee shall not be required to include the Hold Harmless and Indemnification clause in any contract or agreement with an entity engaged in activities presenting relatively low risk of third party claims. These lower risk activities do not, for example, involve ground disturbing activities, the use of heavy equipment, large power tools, or hazardous chemicals. Lower risk activities may involve vehicle use such as passenger cars and light-duty trucks. State and Grantee agree that inclusion of the indemnification and hold harmless clause is not required in Grantee contracts for the following lower risk activities:

- Surveys for roads
- Environmental surveys of plants, animals, wetlands, and other natural features
- Cultural resource surveys
- Professional services, e.g., engineers, geologists, biologists, archeologists, etc.
- Administrative services, e.g., project managers, contracting officers, etc.
- Right-of-way maintenance planning, e.g., identification and marking of danger trees
- Inspections of various kinds that do not involve ground disturbing activities
- Safety observation and accident investigation

If a proposed Grantee activity does not clearly fall within a higher or lower risk activity as described above, Grantee shall consult with State and State shall reasonably determine if a hold harmless and indemnification clause is required for such activity.

**Indemnity by the Grantee.** Grantee shall defend (with counsel acceptable to State’s Attorney General whose approval shall not be unreasonably withheld), indemnify and hold harmless the State of Washington, acting by and through the Department of Natural Resources (DNR), its officials, agents and employees (“indemnified parties”) from all claims that arise out of the negligence of the Grantee or its Permittee in their use of the Permit. A “claim” as used in this section means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorneys’ fees, attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the resulting loss of use. Notwithstanding the foregoing, Grantee’s obligation to defend, indemnify, and hold harmless the indemnified parties from any judgment, decree or arbitration award shall extend only to the percentage of negligence of the Grantee and its Permittee(s) in contribution to such claim. Grantee waives its immunity under Title 51 RCW only to the extent it is required to indemnify, defend and hold harmless the indemnified parties. This indemnification shall survive the expiration or termination of the Permit.

**Limited Waiver of Sovereign Immunity.** Nothing in this Permit shall be deemed or construed to be a waiver of the sovereign immunity of the Nooksack Indian Tribe, its officials, its entities, or employees acting within their official or individual capacities except to the extent provided herein.

Notwithstanding the above provision, the Nooksack Indian Tribe (Grantee) hereby grants a limited waiver of its sovereign immunity from suit or legal process in favor of the State of Washington, acting by and through the Department of Natural Resources, for the sole purpose of
enforcing the terms and conditions of this Permit, if, and only if the claims in the suit relate to the making, formation or validity of, or obligations under this Permit, and are based exclusively on an alleged breach (or breaches) of one or more of the specific obligations, duties, covenants, or warranties expressly made or assumed by the Grantee. This waiver specifically includes the awarding and collection of compensatory damages from Grantee and any other appropriate remedies as may be awarded by the court. This waiver is not for the benefit of any third party and shall not be enforceable by any third party or by any assignee of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorney’s fees.

The limited waiver of the Nooksack Indian Tribe’s sovereign immunity shall be subject to enforcement exclusively in a United States District Court for Western Washington (including any appeal therefrom), except in the event the Federal Court (including any appeal therefrom) determines that it lacks subject matter jurisdiction to resolve the dispute between the Nooksack Indian Tribe and the State of Washington, then it shall be subject to jurisdiction of the Whatcom County Superior Court.

Grantee hereby expressly and irrevocably waives any application of the exhaustion of tribal remedies or abstention doctrine and any other law, rule, regulation or interpretation that might otherwise require, as a matter of law or comity, that resolution of any of the matters to which this limited waiver of sovereign immunity applies be heard first in a tribal court or any other dispute resolution process of Grantee.

Grantee certifies it has authorized approval of this limited waiver of sovereign immunity, and that the signatory has been authorized to sign such on behalf of Grantee. A copy of Grantee’s authority to approve such Tribal limited waiver of sovereign immunity is attached.

Notice. Unless otherwise specified herein, any notices required or permitted under this Permit may be delivered personally, sent by facsimile machine or mailed certified, return receipt requested, to the following addresses or to such other place as the parties hereafter direct. Notice will be deemed given upon delivery or upon confirmation of facsimile, whichever is applicable.

To State: DEPARTMENT OF NATURAL RESOURCES Northwest Region 919 North Township Street Sedro-Woolley, WA 98284

To Grantee: NOOKSACK INDIAN TRIBE PO Box 157 Deming, WA 98244

Integrated Agreement; Modification. This Permit constitutes the entire agreement and understanding of the parties with respect to the subject matter of the Permit and supersedes all prior negotiations and representations. This Permit may not be modified except in writing signed by the parties. The parties agree to execute any additional documents reasonably necessary to effectuate the provisions and purposes of this Permit.
**Severability.** If any provision of this Permit is held to be invalid or unenforceable, this provision shall not affect or invalidate the remainder of this Permit, and to this end the provisions of this Permit are declared to be severable. If any such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Permit.

**Waiver.** Failure of either party to insist upon the strict performance of any of the terms and conditions of this Permit, or failure to exercise any rights or remedies provided in this Permit or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Permit, nor shall any purported oral modification or rescission of this Permit by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision of this Permit shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

**Assignment.** This Permit, and any of the rights granted herein, shall not be assigned without prior written consent of State, except that said rights granted herein may be used by any Permittee, while engaged in the Grantee's operations.

**Construction.** The terms of this Permit shall be given their ordinary meaning unless defined herein and shall not be presumptively construed against either party.

**Exhibits.** All exhibits referred to in this Permit are deemed to be incorporated in this Permit in their entirety.

**Headings.** The headings in this Permit are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Permit nor the meaning of any of its provisions.

**Counterparts.** This Permit may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Permit at different times and places by the parties shall not affect its validity so long as all the parties execute a counterpart of this Permit.
IN WITNESS WHEREOF, the parties hereto have caused this Permit to be executed as below subscribed.

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
NORTHWEST REGION


[Signature]
Tim Stapleton
Acting Northwest Region Manager
919 North Township Street
Sedro-Woolley, WA 98284
(360) 856-3500

NOOKSACK INDIAN TRIBE


[Signature]
By: Ross Cline, Sr.
Title: Chairman
P.O. Box 157
Deming, WA 98244
(360) 592-5176

Approved as to Form this
20th day of May, 2015.
By: Michael Rollinger
Assistant Attorney General
State of Washington
Exhibit A
Permit Premises

Legend
- Other Roads
- Gate
- Existing Road On State
- Existing Road (Exclusive Use) On Private
- Existing Road to be Abandoned
- DNR Managed Lands

0 0.25 0.5 1
Miles

State to Private RUP
Page 12 of 17
Road Use Permit No 50-100571
Exhibit B
HCP Requirements

1) Grantee shall immediately notify State of the following:

a) That Grantee has discovered locations of any species listed by the U.S. Fish and Wildlife Service as threatened or endangered species (listed species) under the Endangered Species Act as such list may be updated from time to time; and

b) That Grantee has located any live, dead, injured, or sick specimens of any listed species.

2) Notification required in subsection 1) must in all circumstances occur as soon as practicable but in any event within 24 hours.

3) Grantee may be required to take certain actions to help State safeguard the well-being of any live, injured or sick specimen of any listed species until the proper disposition of such specimen can be determined by State.

4) Any application for a Forest Practices Permit submitted by Grantee for activities on the State Easement Area must identify that the State Easement Area is covered by the HCP.
Exhibit C
Operational Requirements

• Hauling of forest products, rock, and heavy equipment is not allowed between November 1 and March 31 unless approved in writing by State.

• **Road Abandonment.** Road abandonment is between Milepost 6.5 and Milepost 6.75 and is approximately One Thousand, Three Hundred Twenty (1,320) feet long. Abandonment shall be to Northwest Region’s Road Abandonment Guidelines, attached as Exhibit D, by the termination date of this Permit or by such other date or event agreed upon in writing by State, at its sole discretion.

• Grantee shall control sediment according to the Erosion and Sediment Control Plan, the 2012 Stormwater Management Manual for Western Washington and Best Management Practices as described in the SEPA.

• Grantee shall follow all mitigation measures outlined in the SEPA.

• State and Grantee shall meet annually during the winter season to discuss Grantee’s upcoming plans. Grantee shall contact State to schedule the meeting, which shall take place no later than February 28th of each year.
Exhibit D
Northwest Region's Road Abandonment Specifications

- Remove all ditch relief culverts. The resulting slopes shall be 1:1 or flatter. The removed fill material shall be placed and compacted in a location that will not erode into any Type 1 through 5 waters or wetlands.
- Remove all culverts in natural drainages. The resulting slopes shall be 1:1 or flatter. Strive for matching the existing native stream bank gradient. The natural streambed width shall be re-established. The removed fill material shall be placed and compacted in a location that will not erode into any Type 1 through 5 waters or wetlands.
- Transport all removed culverts off site. All removed culverts shall become the property of the Grantee.
- Construct non-drivable waterbars at natural drainage points and at a spacing that will produce a vertical drop of no more than 20 feet between waterbars and with a maximum horizontal spacing of 400 feet.
- Skew waterbars at least 30 degrees from perpendicular to the road centerline on roads in excess of 3 percent grade.
- Key waterbars into the cut-slope to intercept the ditch. Waterbars shall be outsloped to provide positive drainage. Outlets shall be on stable locations.
- Inslope or outslope the road as appropriate.
- Remove bridges and other structures.
- Pull back unstable fill that has potential of failing and entering any Type 1 through 5 waters or wetlands. Removed material shall be placed and compacted in a stable location.
- Remove berms except as designed.
- Block the road by constructing an aggressive barrier of dense interlocked large woody debris (logs, stumps, root wads, etc.) so that four wheel highway vehicles cannot pass the point of abandonment. Typical barrier dimensions are 10 feet high by 20 feet deep, spanning the entire road prism from top of outslope to toe of fillslope. Long term effectiveness is the primary objective. If necessary construct a vehicular turn-around near the point of abandonment.
- Apply grass seed to all exposed soils resulting from the abandonment work and in accordance with the EROSION CONTROL GUIDELINES, attached as Exhibit E.
Exhibit E
Erosion Control Guidelines

REVEGETATION
Grantee shall spread seed and fertilizer on all exposed soils within the grubbing limits resulting from road work activities. Covering of all exposed soils shall be accomplished by manual dispersal of grass seed and fertilizer. Other methods of covering must be approved in writing by State.

RE-VEGETATION TIMING
Grantee shall perform re-vegetation during the first available opportunity after road work is completed. Soils shall not be allowed to sit exposed for longer than one month without receiving re-vegetation treatment unless otherwise approved in writing by the Contract Administrator.

PROTECTION FOR SEED
Purchaser shall provide a protective cover for seed if re-vegetation occurs between July 1 and March 31. The protective cover shall consist of, but not be limited to dispersed straw, jute matting, or clear plastic sheets as approved by State. The protective cover requirement may be waived by State, in writing, if Grantee is able to demonstrate a re-vegetation plan that will result in the establishment of a uniform dense crop (at least 50% coverage) of 3-inch tall grass by October 31.

ASSURANCE FOR SEEDED AREA
Grantee shall be responsible to ensure a uniform and dense crop (at least 50% coverage) of 3-inch tall grass. Grantee shall reapply the grass seed and fertilizer in areas that have failed to germinate or have been damaged through any cause, before approval from the State. Grantee shall restore eroded or disturbed areas, clean up and properly dispose of eroded materials, and reapply the seed and fertilizer at no additional cost to the State.

GRASS SEED
Grantee shall evenly spread the seed mixture listed below on all exposed soil inside the grubbing limits at a rate of 50 pounds per acre of exposed soil. Grass seed shall meet the following specifications:
1. Weed seed shall not exceed 0.5% by weight.
2. All seed species shall have a minimum 90% germination rate, unless otherwise specified.
3. Seed shall be certified.
4. Seed shall be furnished in standard containers the show the following information:
   a. Common name of seed
   b. Net weight
   c. Percent of purity
   d. Percentage of germination
   e. Percentage of weed seed and inert material
5. Seed shall conform to the following mixture.
### Kind and Variety of Seed in Mixture  % by Weight
- Creeping Red Fescue 50
- Elf Perennial Rye Grass 25
- Highland Colonial Bentgrass 15
- White Clover 10
- Inert and Other Crop 0.5

### FERTILIZER
Grantee shall evenly spread the fertilizer listed below on all exposed soil inside the grubbing limits at a rate of 200 pounds per acre of exposed soil. Fertilizer shall meet the following specifications:

<table>
<thead>
<tr>
<th>Chemical Component</th>
<th>% by Weight</th>
</tr>
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<tbody>
<tr>
<td>Nitrogen</td>
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</tr>
<tr>
<td>Phosphorous</td>
<td>16</td>
</tr>
<tr>
<td>Potassium</td>
<td>16</td>
</tr>
<tr>
<td>Sulphur</td>
<td>3</td>
</tr>
<tr>
<td>Inerts</td>
<td>49</td>
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</tbody>
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RESOLUTION #20-34
April 14, 2020

TITLE: STATE OF WASHINGTON DEPARTMENT OF NATURAL RESOURCES ROAD USE PERMIT # 50-100571 (AGREEMENT CONTAINS LIMITED WAIVER OF SOVEREIGN IMMUNITY)

WHEREAS, the Nooksack Indian Tribe is a party to the Treaty of Point Elliot dated January 22, 1855, 12 Stat. 927, and is a sovereign, federally-recognized Indian Tribe; and

WHEREAS, the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe in accordance with Article III, Section 1 of its Constitution and Bylaws approved by the Deputy Assistant Secretary of Indian Affairs on September 24, 1973, as amended; and

WHEREAS, the health, safety, welfare, education, economic security, employment and preservation of cultural and natural resources are primary goals and objectives of the Nooksack Indian Tribe; and

WHEREAS, salmon are vitally important to the Tribe, and abundance of local salmonid populations, especially threatened Nooksack spring Chinook, has declined to critically low levels; and

WHEREAS, the Nooksack Tribe provides important policy leadership and scientific input to implement and otherwise support the efforts to recover local salmonid populations to harvestable levels; and

WHEREAS, the Salmon Recovery Funding Board (SRFB) has provided funds for the construction of the North Fork Nooksack Farmhouse Phase 4 Restoration Project identified as 18-1685, and requires The Tribe to obtain all necessary permits and permissions required for access and construction of engineered log jam structures; and

WHEREAS, the attached Road Use Permit Agreement contains a limited waiver of sovereign immunity and the Tribe approves the waiver consistent with the terms of the agreement.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby approves the Road Use Permit Agreement with the inclusion of the limited waiver of sovereign; and

BE IT FURTHER RESOLVED, that the Chairman (or other councilperson in his/her absence) is hereby authorized and directed to execute this resolution and any documents connected here

Resolution #20-34
Page 1 of 2

Ph: (360) 592-5164 Fax: (360) 592-4506
within, and the Secretary (or other councilperson in his/her absence) are authorized and directed to execute the following certification.

CERTIFICATION

I, the undersigned do hereby certify that the Nooksack Tribal Council is composed of eight (8) members, of which _6_ were present, constituting a quorum of a duly called meeting thereof held on this _14_ day of _April_ 2020 and that the above Resolution #20-34 approving the State of Washington Department of Natural Resources Road Use Permit # 50-100571 (Agreement contains Limited Waiver of Sovereign Immunity), was duly enacted by the Council Members vote of: _7_ FOR, _0_ OPPOSED, and _0_ ABSTENTIONS, and since its approval this resolution has not been altered, rescinded, or amended in any way.

Dated this _14_ day of _April_ 2020.

Ross Cline, Sr., Chairman
Nooksack Tribal Council

ATTEST:

Frank Leyva, Secretary
Nooksack Tribal Council
NOOKSACK TRIBAL COUNCIL
4979 Mt. Baker Hwy, Suite G.
PO Box 157
Deming, WA 98244

RESOLUTION #18-35
May 25, 2018

TITLE: LANDOWNER AGREEMENT BETWEEN THE NOOKSACK TRIBE AND THE WHATCOM LAND TRUST

WHEREAS, the Nooksack Indian Tribe is a party to the Treaty of Point Elliot dated January 22, 1855, 12 Stat. 927, and is a sovereign, federally-recognized Indian Tribe; and

WHEREAS, the Nooksack Tribal Council is the governing body of the Nooksack Indian Tribe in accordance with Article III, Section 1 of its Constitution and Bylaws approved by the Deputy Assistant Secretary of Indian Affairs on September 24, 1973, as amended; and

WHEREAS, the health, safety, welfare, education, economic security, employment and preservation of cultural and natural resources are primary goals and objectives of the Nooksack Indian Tribe; and

WHEREAS, salmon are vitally important to the Tribe, and abundance of local salmonid populations, especially threatened Nooksack spring chinook, has declined to critically low levels; and

WHEREAS, the Nooksack Tribe plans, implements and otherwise supports high priority projects to recover local salmonid populations to harvestable levels; and

WHEREAS, using high quality scientific information in habitat restoration planning increases certainty that projects will be effective; and

WHEREAS, the most important restoration strategy in the South Fork Nooksack River is the construction of stable log jams to improve spring chinook habitat; and

WHEREAS, The terms and conditions of the agreement include a limited waiver of the Tribe’s sovereign immunity as follows: “Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Grantee, its officials, its entities, or employees acting within their official or individual capacities except to the limited extent provided pursuant to this Section 8. The limited waiver of sovereign immunity is only in favor of the Landowner, its officers, agents and employees and not to any other person or entity. Landowner agrees that this limited waiver of sovereign immunity is to be narrowly construed and shall be subject to enforcement in Federal Court. In the event the Federal Court determines it lacks subject matter jurisdiction to resolve the dispute between Landowner and the Grantee, then it shall be subject
to jurisdiction of the Whatcom County Superior Court, but only in the event there is a final determination by the Federal Court that it lacks subject matter jurisdiction.”.

NOW THEREFORE BE IT RESOLVED, that the Tribal Council hereby approves the Landowner Agreement Between the Nooksack Tribe and the Whatcom Land Trust and the inclusion of the limited waiver of sovereign immunity with the Whatcom Land Trust (WLT) to advance project implementation in the South Fork Nooksack River; and

BE IT FURTHER RESOLVED, that the Chairman (or other councilperson in his/her absence) is hereby authorized and directed to execute this resolution and any documents connected here within, and the Secretary (or other councilperson in his/her absence) are authorized and directed to execute the following certification.

CERTIFICATION

I, the undersigned do hereby certify that the Nooksack Tribal Council is composed of eight (8) members, of which 6 were present, constituting a quorum of a duly called meeting thereof held on this 29 day of May 2018, and that the above Resolution #18-35 approving the LANDOWNER AGREEMENT BETWEEN THE NOOKSACK TRIBE AND THE WHATCOM LAND TRUST was duly enacted by the Council Members vote of: 7 FOR, 0 OPPOSED, and 0 ABSTENTIONS, and since its approval this resolution has not been altered, rescinded, or amended in any way.

Dated this 7 day of May 2018.

Ross Cline, Sr., Chairman
Nooksack Tribal Council

ATTEST:

Frank Leyva, Secretary
Nooksack Tribal Council
Landowner Agreement

For Projects Funded by the Salmon Recovery Funding Board

This Agreement, dated and effective beginning the ______ day of ______, 2018, is made and entered into by and between the Landowner and Grantee identified herein. The parties intend that all terms of this Agreement shall remain in effect for a period of ten years from the date of project completion, and the agreement shall be binding on all successors in interest during this time. The date of project completion is the date of final payment to the project sponsor (here Grantee), as defined in Section E of the Salmon Project Agreement. It is the responsibility of the Grantee to inform the landowner of this date.

Landowner Name (Landowner): Whatcom Land Trust

Street Address: P.O Box 6131

City, State, Zip Code: Bellingham, WA 98225

Salmon Recovery Funding Board Project Sponsor (Grantee):

Grantee Name: Nooksack Indian Tribe

Street Address: P.O. Box 157

City, State, Zip Code: Deming, WA 98244

Purpose of Landowner Agreement

The purpose of this Agreement is to identify and confirm the terms, conditions and obligations agreed upon between the Grantee, who is undertaking a project (Project) funded by the Salmon Recovery Funding Board (SRFB), and the Landowner, who owns the property on which the Project will take place.
Appendix N: Landowner Agreement

The Grantee and Landowner mutually agree to participate in conducting the salmon habitat improvement activities described below on lands owned by Landowner in WRIA 1 Watershed (Water Resource Inventory Area), Whatcom County, State of Washington, Tax Parcel No. 370516255264. The activities also are described in, and in accordance with, the Recreation and Conservation Office (RCO)'s Project Agreement No. 16-2049R dated , into which this agreement, once signed by both parties, becomes incorporated herein.

The Grantee Agrees to:

1. Be responsible for the design and installation of the project, and the conduct and activities of its staff, agents, and representatives.

2. Provide the Landowner with a timeline of estimated dates of Project activities, including start and completion dates, and to keep the Landowner informed of progress.

3. Conduct the project-related activities described in the Project Description, as appended to this agreement.

4. Leave all remaining portions of the property in as near pre-project condition as reasonable, or as otherwise agreed upon in writing with Landowner.

5. Inform Landowner of project completion and the dates for this Agreement.

6. Hold harmless the landowner from any liability associated from injuries or damages occurring to workers implementing the project.

7. Identify the specific maintenance and/or monitoring activities that will be provided by grantee in Attachment A (Include frequency and duration).

8. Nothing in this Agreement shall be deemed or construed to be a waiver of the sovereign immunity of the Grantee, its officials, its entities, or employees acting within their official or individual capacities except to the limited extent provided pursuant to this Section 8. The limited waiver of sovereign immunity is only in favor of the Landowner, its officers, agents and employees and not to any other person or entity. Landowner agrees that this limited waiver of sovereign immunity is to be narrowly construed and shall be subject to enforcement in Federal Court. In the event the Federal Court determines it lacks subject matter jurisdiction to resolve the dispute between Landowner and the Grantee, then it shall be subject to jurisdiction of the Whatcom County Superior Court, but only in the event there is a final determination by the Federal Court that it lacks subject matter jurisdiction.
The Landowner Agrees to:

1. Provide reasonable property access to the Grantee to plan, implement, and complete the project, and to conduct the long-term maintenance and monitoring activities, as described in the Project Description attached to this agreement.

2. Provide the Grantee and RCO, or their employees, agents, representatives, contractors, or assignees, the right to enter the land, at reasonable times, and upon reasonable notice. Entry is solely for project implementation and management purposes, to inspect completed work and to monitor long-term success of the completed project. Except in case of emergency, reasonable notice shall be given at least 48 hours before entry.

3. Not intentionally compromise the integrity of the project;

4. Inform Grantee of all known safety hazards on the property;

5. Identify the specific maintenance and/or monitoring activities that will be provided by Landowner in Attachment A (Include frequency and duration).

6. The Landowner shall indemnify the Grantee, its officers, agents and employees, from and against any and all claims, losses or liability, including attorney’s fees, arising from or the negligence of the Owner.

Landowner has no obligation to provide access to parties other than the Grantee or RCO, or their employees, agents, representatives, contractors, or assignees. For the purposes of viewing the Project for information or educational purposes, Landowner and Grantee must mutually agree before such third-party access is offered.

General Terms

The Landowner shall notify the Grantee of changes in ownership of the property on which the Project is located within thirty (30) days of transfer. In the event of such transfer of ownership, the Landowner shall provide a copy of this Agreement to the succeeding owner prior to such transfer. The Landowner’s written notification to the Grantee will include the name of the new landowner. The sponsor then will contact the new landowner to determine whether or not the landowner agrees to continue the landowner’s specific maintenance, monitoring, and reporting responsibilities as described in Attachment A (if applicable), and to not intentionally compromise the integrity of the project. If the new landowner agrees, please provide a copy of the new landowner-signed statement to continue the landowner’s monitoring, maintenance, and reporting responsibilities as described in Attachment A.

To comply with Executive Order 05-05, Archaeological and Cultural Resources, Grantees may have to complete a cultural resources survey in response to any cultural resources concerns that
might arise. Grantees will notify the landowner if a consultation is required. If required, consultations must be completed before construction begins.

This agreement may be terminated by the Grantee, if in its discretion, it determines that circumstances have rendered the Purpose of this agreement impractical to achieve. Termination also may be sought by either party by providing written notice to the other party. Such termination shall be effective only after authorized representatives of both parties have agreed in writing to such termination and RCO has been provided a thirty (30) day advance written notice of such termination. If, in the event the project is intentionally removed, destroyed, or otherwise compromised in function, or if successor Landowners do not agree to the terms of this Agreement, RCO reserves the right to seek remedy as described in the section titled “Restriction on Conservation of Real Property and/or Facilities to Other Uses” of the Salmon Project Agreement and Washington Administrative Code 420-12-085, which requires the project sponsor to provide a new restoration site to serve as replacement.

This Agreement does not authorize the Grantee or RCO to assume jurisdiction over, or any ownership interest in, the premises. The Landowner retains sole responsibility for taxes, assessments, damage claims, and controlling trespass. The Landowner also retains all benefits and enjoyment of the rights of ownership except as are specifically provided in this agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement.

Grantee: [Signature]
Date: 5/29/18

Provide a copy of this Agreement, and any amendments to this Agreement, to the RCO:
Washington State Recreation and Conservation Office, PO Box 40917 Olympia, WA 98504-0917

State of Washington

County of Whatcom

I certify that I know or have satisfactory evidence that Katherine Romero is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as Chairman of the Nooksack Indian Tribe, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/29/18

[Signature]
Notary Public in and for the State of WA
residing in Everson
My appointment expires: 01/08/2022
Appendix N: Landowner Agreement

Whatcom Land Trust                                           6/1/2018
Landowner                   Date

Provide a copy of this Agreement, and any amendments to this Agreement, to the RCO:
Washington State Recreation and Conservation Office, PO Box 40917 Olympia, WA 98504-0917

State of Washington         }
} ss.
County of Whatcom           }

I certify that I know or have satisfactory evidence that Katherine Romero is the person who
appeared before me, and said person acknowledged that she was authorized to execute the
instrument and acknowledged it as Chairman of the Nooksack Indian Tribe, to be the free and
voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 6/1/2018

Signature

Notary Public in and for the State of Washington residing in Bellingham WA 98225

My appointment expires: 11/29/2019

Debra Emmons
Attachment A: Project Description and Maintenance Responsibilities

1. Written description of the project-related activities that will occur on Landowner’s Property (consistent with project cost elements) and the anticipated salmon or environmental quality benefits: (Include restoration/enhancement activities and any long-term maintenance needs and effectiveness monitoring activities that will occur in future years.)

The Nooksack Indian Tribe proposes to construct 5 Engineered Log Jams (ELJs) in the Nesset’s Phase 2 Reach in the South Fork (SF) Nuxw7iyem Nooksack River, River Mile (RM) 10.9 to 11.4 (Sheet 4 in plans; Appendix A). Phase 2 includes the construction of 5 engineered logjams using three wood configuration over ~2,640 feet of the river. Phase 2 structure numbers include 2-1-24, 2-3-26, 2-3-27, 2-3-28, 2-2-30 as shown on sheet 4 of appendix A. This landowner agreement includes only Phase 2 and is planned for construction during summer 2018.

The ELJs are designed to address factors most limiting Nooksack early Chinook and other salmonid populations in the reach and will ultimately lead to restored habitat conditions and habitat-forming processes in the project reach, with associated improvements in abundance and productivity of Nooksack early Chinook. The project will include driving piles, excavating and placing logs in the active channel to improve instream habitat. Following construction, the portions of the site cleared of trees for access will be revegetated using native deciduous and coniferous trees.

Project activities that will occur on the property include:
- Site surveys during design phase and before and after construction (Winter - Spring 2018-2028),
- Site preparation, including access road improvement including temporary bridge installation over Rothenbuhler Slough (at existing trail crossing location) and staging of materials (logs, pilings; April-July 2018),
- Logjam construction (July-August 2018) - subject to permit and consultation Requirements,
- Seeding, replanting of disturbed areas (August-April 2018),
- Monitoring surveys to document project effectiveness (2018 onward),
- Activities as needed to maintain plantings (2018-2023),
- Removal and disposal at Grantee’s expense of any man made debris or rubbish unearthed or discovered within the worksite during the project.
Appendix N: Landowner Agreement

Project activities details

- **Site Surveys**
  Access to the site prior to construction is required to assess current site conditions for planning purposes and to inform design development. Post construction surveys in addition to project effectiveness monitoring will be required as well to observe and document project progress. Surveys will be conducted on foot with minimal site impact. Vehicle access to the pasture on parcel 370516255264 is not required but would facilitate efficiency of the site surveys.

- **Site preparation**
  Site preparation includes clearing grass with brushcutters and/or mower in the staging areas. The staging areas are shown in Sheet 17 in plans. Clearing of up to 20 small (>8” DBH) Red Alder and understory vegetation is required for access to the river (Sheet 17). Cleared alder will be salvaged and placed back over the access trail.

- **Logjam construction**
  Construction will be completed primarily with large excavators and a crane mounted vibratory and/or impact pile driver. Construction sequencing includes installation of timber piles with hammer and/or excavator, and excavating to the required scour depth prior to placing horizontal logs with and without rootwads to build the ELJ layers. The excavated alluvium will be incorporated back into the ELJs. The ELJs will be lashed together using chain as shown in the respective layering plans (Sheets 6 - 16 in plans). For full construction details see the 100% plans included as Appendix A to the landowner agreement. Log jam construction is subject to permit requirements. In-water construction work will comply with the State of Washington water quality standards for turbidity. Structure locations will be planted with native conifer and deciduous trees following completion of the layering plan in the fall and winter of 2018.

- **Seeding, replanting of disturbed areas**
  Following construction, disturbed areas within the pasture area used for staging will be planted with landowner approved tree, shrub, and/or grass species.

- **Monitoring surveys to document project effectiveness**
  The following monitoring surveys will be conducted to document project effectiveness as outlined in the "Quality Assurance Project Plan for Implementation and Effectiveness Monitoring of Nooksack River Watershed Habitat Restoration Projects" prepared by the Nooksack Tribe in 2013.
  - As-built surveys and reporting to document what was implemented.
  - Structure-scale surveys to document effects occurring at the scale of individual log jams.
  - Bank surveys to document river bank alignment and condition.
  - Reach habitat surveys to document project-level habitat effects.
  - LiDAR and aerial imagery to monitor changes in channel and forest type and distribution in the floodplain.
  - Photo points to visually document changes in log jams and habitat through the reach.
- Activities as needed to maintain plantings
  Plantings in disturbed areas and structure locations will be maintained for five years following construction to ensure 80% survival of plantings. Maintenance includes replacing dead trees and treating invasive species within planting areas.

2. **Describe the maintenance and monitoring responsibilities of both the Landowner and Grantee for the term of this agreement. Include the activities, frequency and duration of work to be performed.**

Maintenance of the site will involve site cleanup to remove any extraneous construction materials, grading to restore the site to pre-construction topographic conditions, and planting where necessary to return the site to as near pre-construction conditions as practical. All planting will be native species appropriate to the site conditions consisting of shrub and conifer components that mimic the surrounding plant density. Plantings will also be designed to encourage growth and recruitment of native trees over the long term.

The Grantee will monitor plantings seasonally for five years after construction; invasive vegetation will be removed, in areas planted, and areas replanted as needed during that time frame. Log jams will be visually monitored yearly during and after large flood events; more detailed monitoring surveys will be conducted 1, 2, 5, 10, 15 and 20 years after construction as described above.

The Landowner will not engage in activities that will undermine the stability of log jam structures or reduce survival of plantings and report any observations related to log jam stability and effectiveness and plant survival to the Grantee.

The Landowner has no maintenance or monitoring responsibilities for this project.